

EXHIBIT C

Daniel Herrick - July 25, 2019

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT Case No. 5:17-cv-194	
MISTY BLANCHETTE PORTER, M.D., Plaintiff	
vs.	
DARTMOUTH-HITCHCOCK MEDICAL CENTER, DARTMOUTH-HITCHCOCK CLINIC, MARY HITCHCOCK MEMORIAL HOSPITAL, and DARTMOUTH-HITCHCOCK HEALTH, Defendants.	
DEPOSITION OF DANIEL HERRICK taken on behalf of the Plaintiff at Norwich, Vermont, on July 25, 2019, at 9:54 a.m., before Cynthia Foster, Registered Professional Reporter.	
2	4
APPEARANCES: Geoffrey Judd Vitt, Esquire Sarah Nunan, Esquire Vitt & Associates, PLC 8 Beaver Meadow Road P.O. Box 1229 Norwich, Vermont, 05055, on behalf of the Plaintiff, Misty Blanchette Porter, M.D. Katherine Burghardt Kramer, Esquire KBK Law 6 Mill Street P. O. Box 23 Middlebury, Vermont, 05753, on behalf of the Plaintiff, Misty Blanchette Porter, M.D. Donald W. Schroeder, Esquire Foley & Lardner, LLP 111 Huntington Avenue, Suite 2500 Boston, Massachusetts, 02199-7610, on behalf of the Defendants, Dartmouth-Hitchcock Medical Center, Dartmouth-Hitchcock Clinic, Mary Hitchcock Memorial Hospital, and Dartmouth-Hitchcock Health.	
1	Email, DeMars and Herrick, 3/29/17, DH0011363-65 41
2	Email, Herrick to DeMars and Shields, 4/18/17, DH0011253-54 46
3	Email, Gunnell and Herrick and DeMars, 4/19/17, DH0009582 52
4	Email, Gunnell and Herrick and DeMars, 4/21/17, DH0009574 63
5	Email, Gunnell and Herrick and DeMars, 4/21/17, DH0009574-76 64
6	Email, Herrick to Gunnell, 4/21/17, DH0009572-73 69
7	Email, DeMars to Herrick, 4/25/17, DH0025744-45 75
8	Email, DeMars and Herrick, 4/27/17, DH0004461-62 96
9	Email, Gunnell to Herrick, 4/28/17, DH0008918-19 101
10	Email, Gunnell to Herrick and DeMars, 4/28/17, DH0008916-17 101
11	Email, Gunnell to Herrick, 5/1/17,
12	Email, Giglio to Merrens, 5/2/17, DH0026715-16 105
13	Email, DeMars to Merrens, 5/14/17, DH0010594-96 109
14	Email, Herrick to Merrens, 5/12/17, DH0010582 121
15	Email, Gunnell to Herrick, 6/6/17, DH0015547-48 128, 134
16	Email, DeMars to Strohbehn, et al, 6/14/17, DH0009476-78 131
17	Email, Padin to Merrens, 6/22/17, DH0013227 135
18	Email, Pizzuti to Gunnell, 9/28/17, DH0015529-30 137
19	Email, Birenbaum to Merrens, 5/12/17, DH0009053 139
20	Email, Gunnell to Herrick, 6/7/17,

1 (Pages 1 to 4)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">5</p> <p style="text-align: center;">STIPULATION</p> <p>It is agreed by and between the attorneys of record for the respective parties hereto as follows:</p> <p>1. That the testimony of the deponent may be taken and treated as if taken pursuant to notice and order to take depositions and that all formalities of notice and order are waived by the parties, and the signatures to the stipulation are in like manner waived;</p> <p>2. That all objections except as to matters of form are reserved until the deposition or any part thereof is offered in evidence;</p> <p>3. That exhibits may be retained by counsel until time of trial.</p> <p>4. That the deposition may be signed by the deponent before any notary public.</p>	<p style="text-align: right;">7</p> <p>1 have an oral response that the court reporter can take down.</p> <p>2</p> <p>3 There may be during the course of this</p> <p>4 deposition objections by Dartmouth-Hitchcock's</p> <p>5 lawyer to the form of my question, and if that</p> <p>6 happens, I'll consider whether or not to</p> <p>7 rephrase my question, but if there is not an</p> <p>8 instruction to you not to answer you should</p> <p>9 answer the question. Do you understand that?</p> <p>10 A Yes.</p> <p>11 MR. SCHROEDER: Just on that point</p> <p>12 Geoffrey, for Cindy's purposes, all objections</p> <p>13 as to form, all other objections reserved until</p> <p>14 the time of trial, read and sign and waive</p> <p>15 notary. If that's acceptable.</p> <p>16 MR. VITT: Fine by me.</p> <p>17 Q What is your position at Dartmouth-Hitchcock?</p> <p>18 A I'm the Vice President of Perioperative and</p> <p>19 Surgical Services.</p> <p>20 Q And how long have you held that position?</p> <p>21 A About four and a half years.</p> <p>22 Q During the course of this case we've been</p> <p>23 provided with a number of documents from</p> <p>24 Dartmouth-Hitchcock which reflect that there</p> <p>25 were a series of conversations among members of</p>
<p style="text-align: right;">6</p> <p>1 DANIEL HERRICK, DULY SWORN</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. VITT:</p> <p>4 Q Good morning, Mr. Herrick.</p> <p>5 A Good morning.</p> <p>6 Q We met a moment ago. My name is Geoffrey Vitt.</p> <p>7 I'm one of the lawyers who represents Dr. Porter</p> <p>8 in this lawsuit against DHMC. Would you state</p> <p>9 your name for record, please?</p> <p>10 A Daniel Herrick.</p> <p>11 Q Where are you employed?</p> <p>12 A Dartmouth-Hitchcock Medical Center.</p> <p>13 Q Have you had your deposition taken prior to</p> <p>14 today in other matters?</p> <p>15 A Yes.</p> <p>16 Q Okay. Let me just go over some ground rules,</p> <p>17 and you've probably heard them before but just</p> <p>18 for the sake of completeness. If you do not</p> <p>19 understand a question that I am asking, please</p> <p>20 tell me and I'll rephrase the question. Is that</p> <p>21 acceptable?</p> <p>22 A Um-hum.</p> <p>23 Q And you need to say yes.</p> <p>24 A Yes.</p> <p>25 Q One of the things that we'd need to do is to</p>	<p style="text-align: right;">8</p> <p>1 management about the REI Division, some</p> <p>2 involving Leslie DeMars, Ed Merrens, Heather</p> <p>3 Gunnell and yourself, and there appear to have</p> <p>4 been multiple emails among those individuals</p> <p>5 about the REI Division. Did you send emails to</p> <p>6 anyone regarding the REI Division other than</p> <p>7 using the email system of Dartmouth-Hitchcock?</p> <p>8 A No.</p> <p>9 Q Do you have a private email address?</p> <p>10 A I do.</p> <p>11 Q Do you use it?</p> <p>12 A For private emails, yes.</p> <p>13 Q Only for private emails?</p> <p>14 A Yes.</p> <p>15 Q So there are no emails on that private email</p> <p>16 address that relate to Dartmouth-Hitchcock,</p> <p>17 Dr. Porter or the REI Division; is that correct?</p> <p>18 A No, there isn't.</p> <p>19 Q Do you text?</p> <p>20 A Yes.</p> <p>21 Q Do you text about business matters occasionally?</p> <p>22 A Yes.</p> <p>23 Q Did you check your text messages in connection</p> <p>24 with the document production in this case?</p> <p>25 A Yes.</p>

2 (Pages 5 to 8)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">9</p> <p>1 Q Did you find any texts that related to</p> <p>2 Dartmouth-Hitchcock?</p> <p>3 A No.</p> <p>4 Q When you have conversations with people in a</p> <p>5 substantive business matter, do you take notes</p> <p>6 of those conversations?</p> <p>7 A Yes.</p> <p>8 Q Do you do file memos?</p> <p>9 A No.</p> <p>10 Q Do you keep those notes?</p> <p>11 A For as long as they're actively, if I'm actively</p> <p>12 involved in a project, yes.</p> <p>13 Q And are they kept in a notebook or is there a</p> <p>14 special place that you keep those notes?</p> <p>15 A No. I would have a separate file for each of</p> <p>16 the initiatives that I may be working on.</p> <p>17 Q So was the closure of the REI Division one of</p> <p>18 the initiatives that you worked on for a period</p> <p>19 of time?</p> <p>20 A Yes.</p> <p>21 Q Did you have notes with respect to that</p> <p>22 particular event or occurrence?</p> <p>23 A I'm certainly sure that I had some notes, yes.</p> <p>24 Q Did you check to see whether those notes were in</p> <p>25 existence at the time this lawsuit was filed?</p>	<p style="text-align: right;">11</p> <p>1 the possible closure of the REI Division, to</p> <p>2 whom did you report?</p> <p>3 A Ed Merrens.</p> <p>4 Q How long had you been reporting to him?</p> <p>5 A Probably a couple of years.</p> <p>6 Q Starting, I think, in late 2016, and if I'm off</p> <p>7 on the timing, please tell me, there was a small</p> <p>8 group that began discussing what to do about the</p> <p>9 REI division; is that accurate?</p> <p>10 A What year?</p> <p>11 Q 2016?</p> <p>12 MR. SCHROEDER: You said 2016.</p> <p>13 Q I'm sorry.</p> <p>14 A I was thinking 1976. 2000?</p> <p>15 Q '16. Late 2016.</p> <p>16 A Yes.</p> <p>17 Q And who were the persons who you recall were</p> <p>18 involved in these discussions?</p> <p>19 A I was involved in discussions with Leslie DeMar,</p> <p>20 Heather Gunnell initially.</p> <p>21 Q Anyone else?</p> <p>22 A Initially at the beginning of the conversations,</p> <p>23 that would have been the two, three of us.</p> <p>24 Q Did the group grow in size?</p> <p>25 A As we got closer to making a decision, yes.</p>
<p style="text-align: right;">10</p> <p>1 A I believe I did. My practice is to consolidate</p> <p>2 those notes into electronic format, and once</p> <p>3 that's done, I would throw them away. So if I'm</p> <p>4 working on a summary document, I'm taking</p> <p>5 information from those notes. Once it's in that</p> <p>6 summary form, then I would dispose of the notes.</p> <p>7 Q Did you check during the course of this case to</p> <p>8 see if you still had those notes?</p> <p>9 A I have looked for all of the documents that have</p> <p>10 been requested, yes.</p> <p>11 Q Did you find any notes?</p> <p>12 A No.</p> <p>13 Q Was there a summary document that you prepared?</p> <p>14 A They would have been in email form which would</p> <p>15 have been in the email system.</p> <p>16 Q Do you have a calendar?</p> <p>17 A Electronic.</p> <p>18 Q Electric calendar?</p> <p>19 A Outlook calendar.</p> <p>20 Q To whom do you report now?</p> <p>21 A I report to Jeffrey O'Brien who is the Senior</p> <p>22 Vice President of Clinical Operations.</p> <p>23 Q How long have you been reporting to him?</p> <p>24 A Approximately one year.</p> <p>25 Q At the time that there were discussions about</p>	<p style="text-align: right;">12</p> <p>1 Q Who else was involved?</p> <p>2 A Well, we would have had conversations with Ed</p> <p>3 Merrens. We had conversations with folks from</p> <p>4 the Value Institute who were working on process</p> <p>5 improvement work.</p> <p>6 Q Anyone else?</p> <p>7 A I guess I don't understand. What timeline are</p> <p>8 we talking about? You mean at any point in</p> <p>9 time?</p> <p>10 Q No, I would say in the period February, March,</p> <p>11 April of 2017?</p> <p>12 A No. No one else.</p> <p>13 Q And am I correct that in April of 2017 a</p> <p>14 decision was made to stop or to close the REI</p> <p>15 Division?</p> <p>16 A Yes. I believe that that's approximately</p> <p>17 correct.</p> <p>18 Q Who were the persons involved in making that</p> <p>19 decision?</p> <p>20 A So the initial recommendation to close down or</p> <p>21 put the REI program on hiatus was a</p> <p>22 recommendation that came from me based on work</p> <p>23 that I had done with Leslie, with Heather, and</p> <p>24 with members of the Value Institute.</p> <p>25 Q To whom did you make the recommendation?</p>

3 (Pages 9 to 12)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">13</p> <p>1 A We made that recommendation to Ed Merrens.</p> <p>2 Q Who made the decision to stop or close the REI</p> <p>3 Division?</p> <p>4 A I strongly advocated for it and asked permission</p> <p>5 to do it. I guess the question, that's a hard</p> <p>6 question to answer in an organization. I mean,</p> <p>7 I guess the higher up, had to be a higher up so</p> <p>8 it was approved by Ed Merrens.</p> <p>9 Q Did it go to the CEO?</p> <p>10 A I don't believe that the decision went to the</p> <p>11 CEO. I believe it was made by Ed Merrens who at</p> <p>12 the time I believe was the Chief Clinical</p> <p>13 Officer.</p> <p>14 Q Do you know if it went to the Board?</p> <p>15 A I do not know that it went to the Board, no.</p> <p>16 Q Why was the decision made to close the division?</p> <p>17 A I think that was pretty straightforward. It was</p> <p>18 marginally profitable. It was at that time</p> <p>19 totally dysfunctional. We were unable to</p> <p>20 sustain staff to run the operation. Patients</p> <p>21 were not getting the care that they deserved,</p> <p>22 and we were not able to provide care that was to</p> <p>23 the reputation of Dartmouth-Hitchcock.</p> <p>24 Q Anything else?</p> <p>25 A No.</p>	<p style="text-align: right;">15</p> <p>1 wouldn't have filtered to you?</p> <p>2 A Yes. That's true.</p> <p>3 Q Why was her employment terminated?</p> <p>4 A She was terminated along with the closure of the</p> <p>5 REI program.</p> <p>6 Q So because she was in the program and because</p> <p>7 the program was closed, therefore her employment</p> <p>8 was terminated?</p> <p>9 A That's correct.</p> <p>10 Q Anything else?</p> <p>11 A No.</p> <p>12 Q How long have you been working at</p> <p>13 Dartmouth-Hitchcock?</p> <p>14 A Eight and a half years.</p> <p>15 Q During that period of time, has</p> <p>16 Dartmouth-Hitchcock closed any division or group</p> <p>17 of the size of the REI Division?</p> <p>18 A I'm not aware of, that we have.</p> <p>19 Q You'd probably be aware if it had occurred,</p> <p>20 right?</p> <p>21 A If it were within my purview. 10,000 people</p> <p>22 work there. I'm not privy to everything.</p> <p>23 Q I don't think you were, but I mean if a division</p> <p>24 had been closed in the 8 and a half years that</p> <p>25 you worked there, don't you think you would know</p>
<p style="text-align: right;">14</p> <p>1 Q In April of 2017, the physicians in the REI</p> <p>2 Division were David Seifer, Albert Hsu,</p> <p>3 Dr. Misty Porter, and Judy McBean was on a per</p> <p>4 diem basis. Do you know of any others?</p> <p>5 A I do not.</p> <p>6 Q So Dr. Seifer and Dr. Hsu were both fairly new</p> <p>7 employees, correct?</p> <p>8 A Fairly new meaning?</p> <p>9 Q Couple years max?</p> <p>10 A Yeah, within three years.</p> <p>11 Q Okay. Dr. Porter was also terminated, correct?</p> <p>12 A The entire program was shuttered so all of the</p> <p>13 providers were terminated.</p> <p>14 Q So she had been there for 21 years. Was there</p> <p>15 any question about her competence as a</p> <p>16 physician?</p> <p>17 A As a physician, I don't believe so. Not that</p> <p>18 I'm aware of.</p> <p>19 Q Do you think you would have been aware of it if</p> <p>20 there were concerns?</p> <p>21 A Not necessarily, no. I'm an administrative vice</p> <p>22 president so I would only be involved</p> <p>23 tangentially.</p> <p>24 Q Do you think that if there were concerns about</p> <p>25 her competence, there's a possibility that</p>	<p style="text-align: right;">16</p> <p>1 about that?</p> <p>2 A I might have. I don't know. I mean, it's</p> <p>3 possible that I, it could have closed and I</p> <p>4 would not know about it.</p> <p>5 Q Okay. But to the best of your knowledge, no</p> <p>6 other division had been closed, right?</p> <p>7 A To the best of my knowledge, that's correct.</p> <p>8 Q At the time that the division was closed, was</p> <p>9 there a demand for the services that the REI</p> <p>10 Division provided?</p> <p>11 A Yes.</p> <p>12 Q Had the division had a long history of exemplary</p> <p>13 service for women not only in the area but</p> <p>14 throughout northern New England?</p> <p>15 A I don't know what "exemplary" means. I mean --</p> <p>16 MR. SCHROEDER: Objection. Calls for</p> <p>17 speculation.</p> <p>18 Q You don't know what "exemplary" means?</p> <p>19 A Not in your terms. So, as I said, we recognized</p> <p>20 that the REI program was not able to continue to</p> <p>21 provide the level of care that is up to the</p> <p>22 reputation of the standards of</p> <p>23 Dartmouth-Hitchcock which is one of the reasons</p> <p>24 that we closed it.</p> <p>25 Q Okay. I was asking you about the history of the</p>

4 (Pages 13 to 16)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">17</p> <p>1 division. Were you told that the division for</p> <p>2 20 plus years had provided excellent service to</p> <p>3 women, not only in the area, throughout New</p> <p>4 England?</p> <p>5 A I was told that we provided exceptional service.</p> <p>6 That's correct.</p> <p>7 Q Had you been told that there were complaints</p> <p>8 about the competence of Dr. Hsu and Dr. Seifer?</p> <p>9 A At what point in time?</p> <p>10 Q At the time you were providing or making the</p> <p>11 decision.</p> <p>12 A No. That was not part of the decision process</p> <p>13 that we were taking.</p> <p>14 Q My question is were you told in connection with</p> <p>15 the work that you were doing that there were</p> <p>16 concerns about the competence of either Dr. Hsu</p> <p>17 or Dr. Seifer?</p> <p>18 A No.</p> <p>19 Q Was there any discussion about the quality of</p> <p>20 care that those two doctors provided?</p> <p>21 A There was -- ask the question again?</p> <p>22 Q Sure. What I want to know is whether you</p> <p>23 received any reports, information, discussion,</p> <p>24 whatever broad term you want to use, that there</p> <p>25 were questions about the competence of either</p>	<p style="text-align: right;">19</p> <p>1 A I would restate that. Not the quality of care</p> <p>2 but the quality of service and support, access,</p> <p>3 followup, and the ability to run the</p> <p>4 organization.</p> <p>5 Q All right. Was there a concern expressed to you</p> <p>6 about the quality of the care provided by the</p> <p>7 physicians in the REI Division to patients?</p> <p>8 A I don't recall that conversation, ever having a</p> <p>9 conversation about that.</p> <p>10 Q Prior to going to work at Dartmouth-Hitchcock,</p> <p>11 where did you work?</p> <p>12 A How far back do you want to go?</p> <p>13 Q Ten years back.</p> <p>14 A I had my own consulting practice.</p> <p>15 Q What was the name of it?</p> <p>16 A Interlakes Advantage International.</p> <p>17 Q I'm sorry?</p> <p>18 A Interlakes Advantage International.</p> <p>19 Q What type of consulting work did you provide?</p> <p>20 A Operations and management.</p> <p>21 Q Where was it located?</p> <p>22 A Meredith, New Hampshire.</p> <p>23 Q Who were your clients? What group of companies</p> <p>24 or individuals were your clients?</p> <p>25 A Typically health care. Not exclusively.</p>
<p style="text-align: right;">18</p> <p>1 Dr. Hsu or Dr. Seifer?</p> <p>2 A No.</p> <p>3 Q Was there any discussion at all about the</p> <p>4 quality of the work that either of them</p> <p>5 provided? Quality of the service.</p> <p>6 A Individually, no.</p> <p>7 Q Well, let's take it one by one. You had a</p> <p>8 series of meetings with individuals, Heather</p> <p>9 Gunnell, Leslie DeMars, among others. Both of</p> <p>10 them were involved in directing or providing</p> <p>11 services through the REI Division, right?</p> <p>12 A Correct.</p> <p>13 Q Did either of them say anything to you, either</p> <p>14 directly to you or as part of a group, about the</p> <p>15 quality of the work, quality of the services</p> <p>16 provided by Dr. Hsu?</p> <p>17 A Not aware of -- I don't recall any conversations</p> <p>18 about quality concerns.</p> <p>19 Q Same question about Dr. Seifer.</p> <p>20 A I don't recall any quality concerns about Dr.</p> <p>21 Seifer.</p> <p>22 Q Now, you said a moment ago that there was a</p> <p>23 question about the quality of the care being</p> <p>24 provided to patients in the REI Division,</p> <p>25 correct?</p>	<p style="text-align: right;">20</p> <p>1 Q Prior to the discussions about closing the REI</p> <p>2 Division, had you on a professional level been</p> <p>3 involved in closing a section, a division, an</p> <p>4 office, a branch, anything like that?</p> <p>5 A Yes.</p> <p>6 Q Can you tell me a couple of examples if there's</p> <p>7 more than one? How about in health care?</p> <p>8 A I have to think about -- I've shut down</p> <p>9 manufacturing facilities. Consolidated</p> <p>10 facilities, consolidated operations. Barnes</p> <p>11 Jewish Christian is a health system in St. Louis</p> <p>12 where we consolidated and was a merger of</p> <p>13 multiple hospitals, 13 hospitals, and my role</p> <p>14 there was to consolidate various organizations</p> <p>15 and pieces of the organization so that we would,</p> <p>16 instead of having 13 departments doing the same</p> <p>17 thing we would have one. Could have been</p> <p>18 support services, like instrument sterilization</p> <p>19 or food service. And those are some that I did,</p> <p>20 those types of work.</p> <p>21 Q In connection with considering whether to shut</p> <p>22 down the REI Division, was any inquiry made</p> <p>23 about the number of women and couples who had</p> <p>24 received services from the REI Division?</p> <p>25 A Who had previously received services?</p>

5 (Pages 17 to 20)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">21</p> <p>1 Q Yes.</p> <p>2 A Not that I'm aware of.</p> <p>3 Q Do other hospitals in New England have what is</p> <p>4 the functional equivalent of an REI Division?</p> <p>5 A Yes.</p> <p>6 Q How many?</p> <p>7 A I don't know exactly.</p> <p>8 Q Would you say it's common for substantial</p> <p>9 hospitals to have a functional equivalent of a</p> <p>10 REI Division?</p> <p>11 A What do you mean by common?</p> <p>12 Q How many hospitals in New England would you say</p> <p>13 are medium to large size?</p> <p>14 A In New England?</p> <p>15 Q In New England.</p> <p>16 A I mean, there's Maine Med, University of</p> <p>17 Vermont, Dartmouth-Hitchcock, and then CMC in</p> <p>18 Manchester, Elliot in Manchester, and then</p> <p>19 you're into Boston.</p> <p>20 Q Okay.</p> <p>21 A And then Rhode Island. So ten? Perhaps.</p> <p>22 Q Do all of those have REI divisions?</p> <p>23 A I don't believe that's true.</p> <p>24 Q Which ones do?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">23</p> <p>1 Q Did you expect that the decision would be well</p> <p>2 received in the public?</p> <p>3 A No.</p> <p>4 Q Was time spent within the institution discussing</p> <p>5 what the message ought to be, how it should</p> <p>6 respond to inquiries, what interviews ought to</p> <p>7 be granted, things like that?</p> <p>8 A Yes.</p> <p>9 Q Who was in charge of that?</p> <p>10 A Our internal marketing group. I don't recall</p> <p>11 the name. Our communications actually.</p> <p>12 Internal communications group.</p> <p>13 Q At the time the decision was made, were there</p> <p>14 patients who were receiving care from the REI</p> <p>15 Division?</p> <p>16 A Yes.</p> <p>17 Q Whose responsibility was it to ensure that those</p> <p>18 patients continued to receive appropriate care?</p> <p>19 A That was part of our plan. I don't recall</p> <p>20 exactly who, all of that, but it was part of the</p> <p>21 plan of execution in terms of making sure they</p> <p>22 would be afforded level of care.</p> <p>23 Q That responsibility would have fallen on a</p> <p>24 physician, correct?</p> <p>25 A Typically, yes.</p>
<p style="text-align: right;">22</p> <p>1 Q So they may have. You don't know.</p> <p>2 A I'm confident that they don't all.</p> <p>3 Q UVM have an REI Division?</p> <p>4 A Yes. They do.</p> <p>5 Q Maine Med?</p> <p>6 A I'm not aware. I don't believe they do, but I'm</p> <p>7 not sure.</p> <p>8 Q When the decisions were being made about whether</p> <p>9 to close the division and terminate the</p> <p>10 employees, did anyone from Dartmouth-Hitchcock</p> <p>11 seek advice from outside the institution? For</p> <p>12 example, did you go to UVM and say hey, how do</p> <p>13 you guys recruit good nurses, anything like</p> <p>14 that?</p> <p>15 A I don't believe that that happened. Or I'm not</p> <p>16 aware that it happened.</p> <p>17 Q Was advice sought from any outside consulting</p> <p>18 firm?</p> <p>19 A I'm not aware that we did.</p> <p>20 Q You would have been aware if that had happened.</p> <p>21 A I would hope so.</p> <p>22 Q Did the institution seek advice from any public</p> <p>23 relations firm about how this decision should be</p> <p>24 conveyed to the public?</p> <p>25 A Externally? I don't believe so.</p>	<p style="text-align: right;">24</p> <p>1 Q And in this case, that would be true, would it</p> <p>2 not?</p> <p>3 A I believe so, yes.</p> <p>4 Q Who was that physician?</p> <p>5 A I believe that would have been under the</p> <p>6 direction of Leslie DeMars.</p> <p>7 Q So as you understood it, it was Leslie DeMars'</p> <p>8 responsibility to see to it that the patients</p> <p>9 receiving care continued to receive appropriate</p> <p>10 care after the closure?</p> <p>11 A To coordinate that activity. Yes.</p> <p>12 Q Right, but I mean, it fell upon her shoulders to</p> <p>13 see that it got done, right?</p> <p>14 A As the Chair, yes.</p> <p>15 Q Right. Was Dartmouth-Hitchcock at the time of</p> <p>16 this decision providing training to residents in</p> <p>17 OB/GYN?</p> <p>18 A Yes.</p> <p>19 Q Did the closure of the REI Division have an</p> <p>20 effect on them receiving the appropriate</p> <p>21 training to be OB/GYN physicians?</p> <p>22 A Yes.</p> <p>23 Q Who was responsible for seeing to it that those</p> <p>24 residents continued to receive the appropriate</p> <p>25 care training?</p>

6 (Pages 21 to 24)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">25</p> <p>1 A Again, under the direction of Leslie DeMars it</p> <p>2 would have been one of her staff members.</p> <p>3 Q Do you know who that was?</p> <p>4 A I don't know.</p> <p>5 Q Did Dartmouth-Hitchcock have fellows who were</p> <p>6 receiving training in OB/GYN besides residents?</p> <p>7 A I'm not sure.</p> <p>8 Q All right. Was there a discussion about how</p> <p>9 those fellows would continue to receive</p> <p>10 appropriate education?</p> <p>11 A I'm not sure. I'm not sure we had fellows at</p> <p>12 the time.</p> <p>13 Q Well, you did.</p> <p>14 A Okay. Then I would say yes, they were part of</p> <p>15 the conversation.</p> <p>16 Q Right. And that would have been on Leslie</p> <p>17 DeMars?</p> <p>18 A Yes.</p> <p>19 Q On kind of her plate to take care of that?</p> <p>20 A Yes. Not necessarily to have the conversations</p> <p>21 but to facilitate that activity.</p> <p>22 Q You mentioned, I believe, that you were aware of</p> <p>23 that the physicians in the REI Division were</p> <p>24 David Seifer, Albert Hsu, and Misty Porter,</p> <p>25 correct?</p>	<p style="text-align: right;">27</p> <p>1 Q Do you have any idea of how successful or</p> <p>2 unsuccessful she was in training him?</p> <p>3 A No.</p> <p>4 Q Do you know whether or not she took call with</p> <p>5 him?</p> <p>6 A I don't.</p> <p>7 Q All right. I want to make sure I've got this</p> <p>8 right. You have no information whatsoever about</p> <p>9 how much time and effort Dr. Porter may have</p> <p>10 spent in training Dr. Hsu; is that accurate?</p> <p>11 A That's correct. I'm an administrative vice</p> <p>12 president for the OB/GYN division.</p> <p>13 Q Well, I understand that, but you were involved</p> <p>14 in discussions extending over a number of months</p> <p>15 about what to do with the REI Division and</p> <p>16 whether or not to keep or to terminate the</p> <p>17 employees, right?</p> <p>18 A Correct.</p> <p>19 Q Okay. And in connection with that, you were</p> <p>20 speaking to people who actually were working in</p> <p>21 the REI Division and seeing to it that the</p> <p>22 patients received care, right?</p> <p>23 A Correct.</p> <p>24 Q What I'm trying to determine is whether any of</p> <p>25 them said to you anything about Misty Porter and</p>
<p style="text-align: right;">26</p> <p>1 A Correct.</p> <p>2 Q Did you know that Albert Hsu was a relatively</p> <p>3 recent hire in the REI Division?</p> <p>4 A Of the three he was the one with the least</p> <p>5 seniority, yes. I know that.</p> <p>6 Q Did you know anything about his background?</p> <p>7 A No.</p> <p>8 Q Did you have information about his level of</p> <p>9 experience when he came to Dartmouth-Hitchcock?</p> <p>10 A No.</p> <p>11 Q Did anyone raise a question in the discussions</p> <p>12 that you had about Dr. Hsu's ability to perform</p> <p>13 the services required of a physician in the REI</p> <p>14 Division?</p> <p>15 A No.</p> <p>16 Q Do you know anything about the efforts made by</p> <p>17 Dr. Porter to train or mentor him?</p> <p>18 A No details, no.</p> <p>19 Q Anything at all?</p> <p>20 A Only that she was part of a program, part of</p> <p>21 helping him to grow, that she was doing some</p> <p>22 work to help him.</p> <p>23 Q Other than you knew that she did "some work," do</p> <p>24 you have any idea how much time she spent?</p> <p>25 A No.</p>	<p style="text-align: right;">28</p> <p>1 Albert Hsu?</p> <p>2 A I have no recollection of any of those types of</p> <p>3 conversations.</p> <p>4 Q Okay. David Seifer; do you know how he came to</p> <p>5 be hired?</p> <p>6 A I do not.</p> <p>7 Q Do you know where he came from?</p> <p>8 A I do not.</p> <p>9 Q Do you have any information about his qualities</p> <p>10 as a manager?</p> <p>11 A I do not.</p> <p>12 Q Do you know anything about the scope of his</p> <p>13 practice; that is, did it include the entire</p> <p>14 OB/GYN spectrum or was it limited to IVF work?</p> <p>15 A I don't know.</p> <p>16 Q Did anyone comment to you about his skills or</p> <p>17 lack of skills in performing the basic functions</p> <p>18 of a physician doing OB/GYN work?</p> <p>19 A Not to my recollection. No.</p> <p>20 Q Did anyone tell you or mention anything about</p> <p>21 his interpersonal skills?</p> <p>22 A No.</p> <p>23 Q How about his dealings with patients? Do you</p> <p>24 know anything about that?</p> <p>25 A No.</p>

7 (Pages 25 to 28)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">29</p> <p>1 Q I want to ask you some questions about the</p> <p>2 nursing staff at the REI Division. Is there</p> <p>3 anything about the REI work that you understand</p> <p>4 is particularly stressful for nurses?</p> <p>5 A I mean, all nurses in procedural areas are</p> <p>6 stressed so I guess I don't understand.</p> <p>7 Q Well, there are some areas of nursing that might</p> <p>8 be particularly stressful. Traumatic surgery or</p> <p>9 working with children who have cancer. You</p> <p>10 know, there might be some stresses there. I</p> <p>11 just wonder whether anybody said anything about</p> <p>12 the nurses doing REI work. Is there any</p> <p>13 stressor in that position that seems unusual</p> <p>14 that you're aware of?</p> <p>15 A I'm not aware of anything with the exception of</p> <p>16 the demand for weekend coverage when a woman is</p> <p>17 in a cycle for either extraction or</p> <p>18 fertilization where they need to be on call so</p> <p>19 from a time constraint, there may be some</p> <p>20 challenges there.</p> <p>21 Q Okay.</p> <p>22 A Otherwise, not in the work that they do.</p> <p>23 Q Is the work particularly rewarding?</p> <p>24 MR. SCHROEDER: Objection. Calling for</p> <p>25 speculation.</p>	<p style="text-align: right;">31</p> <p>1 In that general ballpark.</p> <p>2 Q So prior to February of 2017 --</p> <p>3 A Thereabouts.</p> <p>4 Q I understand, you know, could be January or</p> <p>5 December, somewhere in that range.</p> <p>6 A Um-hum.</p> <p>7 Q But prior to that period in time, you hadn't</p> <p>8 heard of the REI Division having a problem</p> <p>9 recruiting and keeping nursing staff, correct?</p> <p>10 A Not that I'm aware of. No.</p> <p>11 Q Was the problem of an adequate nursing staff</p> <p>12 something that you considered? Was that an</p> <p>13 issue you discussed?</p> <p>14 MR. SCHROEDER: Objection. Asked and</p> <p>15 answered. He's already highlighted that fact.</p> <p>16 That's one of the reasons for closing the</p> <p>17 division.</p> <p>18 MR. VITT: Excuse me. You can make</p> <p>19 objections. You cannot suggest answers. I'm</p> <p>20 not going to tolerate it. Don, you're going to</p> <p>21 listen to me, and after I finish you may talk.</p> <p>22 I'm not going to tolerate today having you</p> <p>23 suggest questions as you did, suggest answers as</p> <p>24 you did yesterday. That's not going to happen.</p> <p>25 MR. SCHROEDER: I'm not suggesting any</p>
<p style="text-align: right;">30</p> <p>1 A I don't know.</p> <p>2 Q Nobody said that to you?</p> <p>3 A No. I never had a conversation about the work.</p> <p>4 Being rewarding or not being rewarding.</p> <p>5 Q The REI Division at Dartmouth-Hitchcock had been</p> <p>6 around for over 20 years. Do you know whether</p> <p>7 there had been reports over that period of time</p> <p>8 about the division having problems recruiting</p> <p>9 and keeping nurses?</p> <p>10 A Absolutely.</p> <p>11 Q Over the entire period of time?</p> <p>12 A No. Not over the 20 years. I don't know. I</p> <p>13 was only there 8 and a half years. I only ran</p> <p>14 that particular business for four and a half.</p> <p>15 Q At what point in time do you understand that</p> <p>16 there became a problem in that division</p> <p>17 recruiting and keeping nurses?</p> <p>18 A About the time frame that we initially spoke</p> <p>19 about where we began to have conversations and</p> <p>20 invited the Value Institute in to look at their</p> <p>21 services and see if they can help.</p> <p>22 Q When would you say that started?</p> <p>23 A I don't have the dates. Whenever we first, when</p> <p>24 you first started talking about the meetings</p> <p>25 that we had. So in roughly February-ish of '17.</p>	<p style="text-align: right;">32</p> <p>1 answers.</p> <p>2 MR. VITT: Well, you did yesterday, and</p> <p>3 it's not going to happen today.</p> <p>4 MR. SCHROEDER: You're not going to tell me</p> <p>5 how to object on the record.</p> <p>6 MR. VITT: Yes, actually I am.</p> <p>7 MR. SCHROEDER: I objected. Asked and</p> <p>8 answered.</p> <p>9 MR. VITT: That's all right, but you're not</p> <p>10 going to go on past that.</p> <p>11 MR. SCHROEDER: I'll object whatever way I</p> <p>12 see fit in accordance with the rules.</p> <p>13 MR. VITT: You stick with the rules, you'll</p> <p>14 be fine. You go past that, we're going to</p> <p>15 adjourn this deposition. I'm going to take a</p> <p>16 break.</p> <p>17 (Recess taken 10:29 - 10:34 a.m.)</p> <p>18 BY MR. VITT:</p> <p>19 Q Could you tell me what your job duties are at</p> <p>20 Dartmouth-Hitchcock?</p> <p>21 A So as I said I'm Vice President of Perioperative</p> <p>22 and Surgical Services. I'm the Operating Vice</p> <p>23 President for Perioperative Services. I run on</p> <p>24 a day-to-day basis all of the operating rooms</p> <p>25 there for 23,000 cases a year. I'm also the</p>

8 (Pages 29 to 32)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">33</p> <p>1 Administrative Vice President for the Department 2 of Surgery which has 13 surgical services. The 3 Department of Orthopaedics, Department of 4 OB/GYN, the Pain and Spine Center, and the 5 anesthesia team. So as I said, the operating 6 VP, on a day-to-day basis I'm making sure that 7 the operating rooms are being run properly. As 8 the administrative VP for all of the others, I 9 manage budgets, I manage budget allocations, I 10 approve hiring, I approve major decisions that 11 are made that support that in a nonclinical 12 manner. And I get involved in clinical 13 activities only in cases of quality concerns so 14 financial challenges.</p> <p>15 Q Financial what?</p> <p>16 A Financial difficulties if parts of a business 17 are not doing -- so I'm looking at performance 18 as number of patients we see a day, access time 19 for patients to get in to see a clinic, access 20 time for them to get scheduled into the OR. 21 Things like that.</p> <p>22 I manage all of the OR schedulers and all 23 of the sections that all have schedulers that 24 report in for me. I also manage the instrument 25 sterilization, case cart building, and have</p>	<p style="text-align: right;">35</p> <p>1 A So the CPHQ is provided by some quality health 2 care organization. I don't know the exact name. 3 I'm a Lean Six Sigma Black Belt certified by the 4 AMC, I believe. And also by, I don't remember 5 the agencies. I mean, it's a certification. I 6 just don't remember the agencies.</p> <p>7 Q Okay. At some point in 2016, 2017, was there a 8 recognition that there was a shortage of nurses 9 to work in the REI Division?</p> <p>10 A There was a high turnover level of nursing in 11 the REI Division which at times manifests itself 12 with shortages.</p> <p>13 Q What was the reason for the high turnover?</p> <p>14 A As I said, the information that we received was 15 that it was a dysfunctional organization, and it 16 wasn't being run in an efficient manner.</p> <p>17 Q And who had the responsibility to see that it 18 was run in an efficient manner?</p> <p>19 A So Leslie DeMars as the Chair would own that. 20 As an administrative VP I would have the 21 responsibility to support her in helping to make 22 sure that that worked.</p> <p>23 Q David Seifer was the head of the division, 24 correct? The REI Division?</p> <p>25 A I don't know that that's -- I can't confirm</p>
<p style="text-align: right;">34</p> <p>1 roughly 800 people that report through my chain 2 of command.</p> <p>3 Q Okay. Thank you. And has your job functions 4 remained pretty much the same since you came to 5 Dartmouth-Hitchcock?</p> <p>6 A Well, I've only done that role the last four and 7 a half years.</p> <p>8 Q Between the time that you did consulting work 9 and coming to Dartmouth-Hitchcock, did you have 10 any other employment?</p> <p>11 A No.</p> <p>12 Q Could you give me your education? I'm sorry.</p> <p>13 A Bachelor's degree in business management 14 finance. I'm a Lean Six Sigma black belt and 15 Certified Professional Health Care Quality.</p> <p>16 Q What about the black belt? I'm sorry.</p> <p>17 A I'm a Lean Six Sigma Master Black Belt 18 certified.</p> <p>19 Q What does that mean? I'm sorry.</p> <p>20 A Lean Six Sigma is a process control, process 21 improvement operations leadership.</p> <p>22 Q Okay.</p> <p>23 A And I'm a certified professional health care 24 quality.</p> <p>25 Q And who provides that certification?</p>	<p style="text-align: right;">36</p> <p>1 that. I don't know.</p> <p>2 Q All right. Did you ask Leslie DeMars why is 3 there such high turnover in the nursing?</p> <p>4 A We had conversations about why and yes, we 5 recognized there was dysfunction and that was 6 why we invited the HR and Value Institute folks 7 to come in and work with the team to see if they 8 could sort out this dysfunction.</p> <p>9 Q Did she attribute the dysfunction and the high 10 turnover to the leadership in the REI Division?</p> <p>11 A I don't recall that that would be the only -- 12 that would have been one of the reasons that she 13 mentioned. I don't know that that was the only 14 one.</p> <p>15 Q Do you think she did mention that?</p> <p>16 A I don't recall specifically having conversations 17 about that. Just that it was dysfunctional.</p> <p>18 Q But you don't recall her describing exactly why 19 the dysfunction was occurring, correct?</p> <p>20 A No. I would not have been all that curious as 21 to why. I would have just recognized that we 22 had a dysfunction and we needed to fix it.</p> <p>23 Q Do you know if anyone asked the nurses who 24 either were there or who had left why they were 25 dissatisfied and why they were leaving?</p>

9 (Pages 33 to 36)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">37</p> <p>1 A I'm sure that the HR and the Value Institute</p> <p>2 folks did when they held some group meetings to</p> <p>3 try to do some process mapping and understand</p> <p>4 what the challenges were. I'm sure that was</p> <p>5 done. Yes.</p> <p>6 Q Did you see any reports or summaries --</p> <p>7 A No.</p> <p>8 MR. SCHROEDER: Wait until he finishes the</p> <p>9 question before you answer.</p> <p>10 Q Thank you. Do you think that's something the</p> <p>11 Value Institute should have done or did do, find</p> <p>12 out from the nurses why are you dissatisfied,</p> <p>13 why are you leaving?</p> <p>14 A Yes.</p> <p>15 Q Did anyone to your knowledge go to UVM and ask</p> <p>16 them whether they had a problem recruiting and</p> <p>17 keeping nursing staff?</p> <p>18 A I'm not aware of that.</p> <p>19 Q Did you receive information that the UVM REI</p> <p>20 Division did not have a problem keeping and</p> <p>21 recruiting its nursing staff?</p> <p>22 A I don't recall a conversation about UVM's</p> <p>23 operations.</p> <p>24 Q Did you believe that the location of</p> <p>25 Dartmouth-Hitchcock being essentially not in the</p>	<p style="text-align: right;">39</p> <p>1 A Yes.</p> <p>2 Q Did you understand that they consulted with</p> <p>3 patients who for other reasons might be at risk</p> <p>4 of losing fertility?</p> <p>5 A Yes.</p> <p>6 Q Did you understand that they worked with</p> <p>7 patients who had genetic disorders such as</p> <p>8 cystic fibrosis, sometimes kidney disease, to</p> <p>9 help them?</p> <p>10 A Same question. Yes. I don't know the</p> <p>11 specificity but other reproductive issues, yes.</p> <p>12 Q Did you know that they worked with patients who</p> <p>13 had had recurrent pregnancy losses?</p> <p>14 A Yes.</p> <p>15 Q Did you know that they helped treat woman who</p> <p>16 had various endocrine or hormonal abnormalities</p> <p>17 such as pituitary tumors?</p> <p>18 A Not specifically. But yes.</p> <p>19 Q Did you know that they did work in pediatric and</p> <p>20 adolescent gynecology?</p> <p>21 A No.</p> <p>22 Q Did you know that they helped women who had</p> <p>23 birth defects in their reproductive tract?</p> <p>24 A Not specifically.</p> <p>25 Q Did you know that physicians in the REI Division</p>
<p style="text-align: right;">38</p> <p>1 city, somewhat rural area, did that have</p> <p>2 anything to do with the problems recruiting and</p> <p>3 keeping nursing staff?</p> <p>4 A No.</p> <p>5 Q Do you know if anyone checked with the prior</p> <p>6 management of the REI Division to ask whether</p> <p>7 they had had a problem with the nursing staff?</p> <p>8 A I have no knowledge of that, no.</p> <p>9 Q Did you know whether prior leadership of the REI</p> <p>10 Division was still in the area?</p> <p>11 A I don't even know who that is.</p> <p>12 Q Can you tell me what are the services that you</p> <p>13 understand the REI Division provides or did</p> <p>14 provide?</p> <p>15 A Two main functions. One is a lab that would</p> <p>16 store, preserve, and maintain various specimens,</p> <p>17 eggs and sperm, that are taken from in the</p> <p>18 process of extracting and saving them. The</p> <p>19 other would be the process of actually doing in</p> <p>20 vitro fertilization for the women that are</p> <p>21 seeking to become pregnant.</p> <p>22 Q Okay. Did you understand that physicians in the</p> <p>23 REI Division provided consultation with cancer</p> <p>24 patients, both male and female, to attempt to</p> <p>25 preserve fertility?</p>	<p style="text-align: right;">40</p> <p>1 worked with women who had uterine fibroids,</p> <p>2 pelvic masses, endometriosis, things like that?</p> <p>3 A Yes.</p> <p>4 Q Did you know that they worked with patients who</p> <p>5 had early pregnancy complications?</p> <p>6 A While they were pregnant, you mean?</p> <p>7 Q Yes.</p> <p>8 A I didn't know it. I'm not surprised, but I</p> <p>9 didn't know it.</p> <p>10 Q Did you know that they handle pelvic</p> <p>11 ultrasounds?</p> <p>12 A Yes.</p> <p>13 Q Do you know who within the REI Division was the</p> <p>14 principal person with expertise in pelvic</p> <p>15 ultrasounds?</p> <p>16 A I believe Misty Porter.</p> <p>17 Q Did you have any information about the extent of</p> <p>18 her expertise in this area?</p> <p>19 A No.</p> <p>20 Q How about her reputation?</p> <p>21 A No.</p> <p>22 Q Was there anyone else in the REI Division who</p> <p>23 you understood was capable of competently</p> <p>24 reading pelvic ultrasounds?</p> <p>25 A I'm unaware. I don't know.</p>

10 (Pages 37 to 40)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">41</p> <p>1 Q I'm going to mark as Herrick number 1 a document</p> <p>2 11363-365.</p> <p>3 (Exhibit 1 marked for identification)</p> <p>4 Q I show you what's been marked as Exhibit 1. Is</p> <p>5 the first page an email that you sent to Leslie</p> <p>6 DeMars and her response that same day?</p> <p>7 A Yes.</p> <p>8 Q Yes?</p> <p>9 A Appears to be.</p> <p>10 Q Okay. And in her email, Dr. DeMars says that</p> <p>11 Misty has been on long-term disability almost</p> <p>12 the entire FY including or excluding her salary</p> <p>13 swings cost substantially. Did you know that</p> <p>14 she had been on a disability?</p> <p>15 A I did not.</p> <p>16 Q Was this the first time that you were aware that</p> <p>17 she'd been on disability?</p> <p>18 A I believe this would have been the first time</p> <p>19 that I became aware of it, yes.</p> <p>20 Q Did you ask Leslie DeMars or did she tell you</p> <p>21 why she had been on leave?</p> <p>22 A No.</p> <p>23 Q Did you have information about whether going</p> <p>24 forward Dr. Porter would be able to work on a</p> <p>25 full-time basis in the division?</p>	<p style="text-align: right;">43</p> <p>1 and/or shut it down, and Leslie was, I believe,</p> <p>2 spitballing ideas as to having the program on</p> <p>3 hiatus for a very short period of time and that</p> <p>4 this would be an individual who could be someone</p> <p>5 who would reorganize and run the division.</p> <p>6 Q Was she suggesting that Dan Grow had the</p> <p>7 training and ability to take over the division?</p> <p>8 A To, yes, to reup or reopen the division, yes.</p> <p>9 Q Was she suggesting to you that he could replace</p> <p>10 the existing leadership of the division?</p> <p>11 A Over time, yes. I believe that the conversation</p> <p>12 was that we were putting the program on hiatus,</p> <p>13 that we would reopen it in a year, two years,</p> <p>14 three years, and Leslie was saying that we might</p> <p>15 not have to wait a year or two or three because</p> <p>16 she had found a candidate who she thought could</p> <p>17 fit the bill.</p> <p>18 Q At the time of this email, the talk was that the</p> <p>19 hiatus would be somewhere in the</p> <p>20 one-to-three-year period?</p> <p>21 A Well, I think it depends on who you were asking.</p> <p>22 In my mind it was one to three years.</p> <p>23 Q Why did you come to that period?</p> <p>24 A I believe that once we agreed to shut it down</p> <p>25 and we were taking care of our patients that we</p>
<p style="text-align: right;">42</p> <p>1 A No. No conversation about that.</p> <p>2 Q Was there any information about the quality of</p> <p>3 her work?</p> <p>4 A No.</p> <p>5 Q In the second paragraph of her email, she says</p> <p>6 you would really like Dan Grow. I hope that you</p> <p>7 two can connect soon. He does triathlons for</p> <p>8 fun and mental health. Who is Dan Grow?</p> <p>9 A Dan Grow is a physician that Leslie knew or met,</p> <p>10 had some conversations with, about potentially</p> <p>11 working at Dartmouth-Hitchcock.</p> <p>12 Q Was he interviewed?</p> <p>13 A I don't believe he was formally interviewed, no.</p> <p>14 Q All right. Was she suggesting or requesting</p> <p>15 that you meet him?</p> <p>16 A Yes.</p> <p>17 Q Did you meet him?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A There was, I had no intention or interest in</p> <p>21 meeting him.</p> <p>22 Q And why not?</p> <p>23 A We had taken the decision, I believe by this</p> <p>24 time we had taken the decision or were close to</p> <p>25 taking the decision to put the program on hiatus</p>	<p style="text-align: right;">44</p> <p>1 would take the time to develop a formal business</p> <p>2 plan and be sure that we reopened the division</p> <p>3 in a way that would be appropriate for the</p> <p>4 entire community that we served.</p> <p>5 Q And what is that community?</p> <p>6 A Our catchment area would be anywhere in Maine,</p> <p>7 New Hampshire, and Vermont.</p> <p>8 Q You thought it would take one to three years to</p> <p>9 do the business plan?</p> <p>10 A To put a business plan and write an evaluation</p> <p>11 and get the right staff together and get it up</p> <p>12 and started again.</p> <p>13 Q Where are you in that process now?</p> <p>14 A We have some initial work, but it's very</p> <p>15 preliminary. We just replaced the Interim Chair</p> <p>16 of OB/GYN with a new Chair who started July 1st,</p> <p>17 and, you know, nothing was going to happen until</p> <p>18 we got that new Chair in place.</p> <p>19 Q And was the new Chair hired with the expectation</p> <p>20 that he or she would be responsible for helping</p> <p>21 coordinate the work to restart the REI Division?</p> <p>22 A That the idea of restarting it would be part of</p> <p>23 the responsibilities that they would have. Not</p> <p>24 a foregone conclusion that we would restart.</p> <p>25 Q Who is the new Chair?</p>

11 (Pages 41 to 44)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">45</p> <p>1 A I believe her name is Ilana Cass.</p> <p>2 Q Can you spell the last name?</p> <p>3 A C A S S.</p> <p>4 Q If you could look at page 11364, the Pro-Forma.</p> <p>5 Do you have that?</p> <p>6 A Um-hum.</p> <p>7 Q You need to say yes.</p> <p>8 A Yes.</p> <p>9 Q Thank you. If you look to the right under the</p> <p>10 heading of Proposed Actions, there are three</p> <p>11 options as I see it; is that accurate?</p> <p>12 A That's the way I read it.</p> <p>13 Q Okay. And what are those three possible</p> <p>14 actions?</p> <p>15 A Discontinue the program, put the program on --</p> <p>16 discontinue the IVF program, put the REI program</p> <p>17 on hiatus and make appropriate staff</p> <p>18 adjustments.</p> <p>19 Q What would be an appropriate staff adjustment?</p> <p>20 A Well, if we discontinued the program and/or put</p> <p>21 it on hiatus, we would not keep staff on salary.</p> <p>22 Q So let me --</p> <p>23 A These are not three options. These are three</p> <p>24 proposed actions.</p> <p>25 Q Okay. So would one of the proposed actions be</p>	<p style="text-align: right;">47</p> <p>1 Q Who is Samuel N. Shields, Jr.?</p> <p>2 A Right now he's the, I believe at the time he was</p> <p>3 the Vice President of the Operations Excellence</p> <p>4 which is the Value Institute. Running the Value</p> <p>5 Institute.</p> <p>6 Q You say in here, "I spoke with Sam today and he</p> <p>7 has agreed to provide us with a project manager</p> <p>8 to support our strategy to shut down IVF and put</p> <p>9 the REI program on hold."</p> <p>10 What was the project manager supposed to</p> <p>11 do?</p> <p>12 A Just coordinate all the activities, make sure</p> <p>13 that we were touching all the bases.</p> <p>14 Q Was a project manager appointed?</p> <p>15 A I don't recall whether we did or didn't.</p> <p>16 Q You go on to say, "I think we are ready to share</p> <p>17 our plans with Ed and Maria." That's Maria</p> <p>18 Padine?</p> <p>19 A That's correct.</p> <p>20 Q Was she involved in these discussions?</p> <p>21 A She became involved near the end.</p> <p>22 Q Did she have a role in making the decision?</p> <p>23 A I suppose she had input in making the decision,</p> <p>24 yes.</p> <p>25 Q Did you participate in discussions with her?</p>
<p style="text-align: right;">46</p> <p>1 to make staff adjustments and to keep the REI</p> <p>2 Division open?</p> <p>3 A No. We were recommending that we discontinue</p> <p>4 the IVF program, that we put the REI program on</p> <p>5 hiatus and that we make appropriate staff</p> <p>6 adjustments to satisfy that. These are three</p> <p>7 steps. These are not three options.</p> <p>8 Q And as I read this at least at the time this was</p> <p>9 prepared which would be roughly what, March 23,</p> <p>10 around then?</p> <p>11 A Yes.</p> <p>12 Q Okay. That there were six patients who were</p> <p>13 currently receiving treatment?</p> <p>14 A They were in IVF cycles, yes. And that our plan</p> <p>15 was to make sure they continued to receive the</p> <p>16 level of care that they were receiving.</p> <p>17 Q We'll mark as Exhibit 2 a document running page</p> <p>18 11253 through -- there's a third page that's</p> <p>19 attached, doesn't appear to have a Bates number.</p> <p>20 Apparently this was produced in native format.</p> <p>21 MR. SCHROEDER: That's why.</p> <p>22 (Exhibit 2 marked for identification)</p> <p>23 Q Is Exhibit 2 an email that you sent to Leslie</p> <p>24 DeMars?</p> <p>25 A Yes.</p>	<p style="text-align: right;">48</p> <p>1 A I believe that I had, I was in meetings where we</p> <p>2 reviewed options that she was there, yes.</p> <p>3 Q Did she support the idea of closing the REI</p> <p>4 Division?</p> <p>5 A I don't recall that she did or did not.</p> <p>6 Q You don't know what position she took.</p> <p>7 A I don't.</p> <p>8 Q Did she say anything about terminating the</p> <p>9 physicians?</p> <p>10 A I don't recall that conversation.</p> <p>11 Q You don't know whether she said anything at all?</p> <p>12 A I don't.</p> <p>13 Q You indicate in your memo that Leslie DeMars</p> <p>14 would take the lead, right? Why is that?</p> <p>15 A Where I do say that?</p> <p>16 Q "I will let you take the lead on that." It's</p> <p>17 the last line of Exhibit 2.</p> <p>18 A Yes. To set up the meeting with Ed and Maria</p> <p>19 and to either have the conversations with them</p> <p>20 or to include me. It was up to her. So I</p> <p>21 collaborated with Leslie on putting the plan</p> <p>22 together. This is the plan. It's now ready to</p> <p>23 be presented to Ed and Maria for their approval.</p> <p>24 She can take the lead on that. She can do it</p> <p>25 with or without me. However she feels. She's</p>

12 (Pages 45 to 48)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">49</p> <p>1 the Chair.</p> <p>2 Q As of April 18, 2017, are you saying that Leslie</p> <p>3 DeMars supported closing the REI Division and</p> <p>4 terminating the physicians?</p> <p>5 A As of that date, Leslie did support closing down</p> <p>6 the function, and yes, all of the action items</p> <p>7 as outlined here, yes.</p> <p>8 Q And that would include --</p> <p>9 A The staffing adjustments would include that.</p> <p>10 Yes.</p> <p>11 Q How had she conveyed to you her approval of</p> <p>12 closing down the division and terminating the</p> <p>13 physicians?</p> <p>14 A Verbally.</p> <p>15 Q In one meeting or more than one?</p> <p>16 A So there was one meeting in particular when we</p> <p>17 were, we had a presentation by the Value</p> <p>18 Institute and the HR folks who were talking --</p> <p>19 it was over at the other building. We were</p> <p>20 talking about the dysfunction in the</p> <p>21 organization and the Value Institute staff who</p> <p>22 had been trying to put standard work in and</p> <p>23 trying to get everybody to do everything the</p> <p>24 same way to follow the same processes, to share</p> <p>25 staff, and the organization, they had tried</p>	<p style="text-align: right;">51</p> <p>1 agreed that based on what we had just heard that</p> <p>2 she did not see another option and that based on</p> <p>3 that I would begin to put together a plan</p> <p>4 working with Heather and collaborating with her</p> <p>5 to move forward with it. So it was at that</p> <p>6 point that we made the decision to recommend to</p> <p>7 the senior leadership that we would shut the</p> <p>8 program down.</p> <p>9 Q What was the date of that meeting?</p> <p>10 A I don't recall the exact date of that meeting.</p> <p>11 Q In the discussions with the Value Institute, was</p> <p>12 anything said about the competence of the</p> <p>13 physicians working in the REI Division?</p> <p>14 A In the presentation that they gave us, in that</p> <p>15 one-to-one and a half hours preceding the</p> <p>16 conversation that I just described with Leslie,</p> <p>17 all of the conversation was about the function</p> <p>18 of the department and the inability for them to</p> <p>19 get the staff, the physicians, to adopt a common</p> <p>20 standard way of doing business. There was no</p> <p>21 conversation about medical care.</p> <p>22 Q And no conversation about the competence of the</p> <p>23 doctors who were providing the care?</p> <p>24 A No.</p> <p>25 Q And you said that because of the turnover rate</p>
<p style="text-align: right;">50</p> <p>1 several times to implement these changes, they</p> <p>2 were unsuccessful. And the recruiting people,</p> <p>3 the division of the HR team that does the</p> <p>4 recruiting, informed both Leslie and I at that</p> <p>5 point in time that they were no longer going to</p> <p>6 recruit staff into the REI function because of</p> <p>7 its dysfunction and because of the high turnover</p> <p>8 rate and that they felt it was unfair to recruit</p> <p>9 new staff into a dysfunctional organization.</p> <p>10 Following that meeting when everyone left</p> <p>11 the room, Leslie and I remained, and I shared</p> <p>12 with Leslie that it was my very strong</p> <p>13 recommendation that we needed to either shut the</p> <p>14 program down or put it on hiatus or however that</p> <p>15 would work out, but that we cannot continue. We</p> <p>16 can't hire staff, we can't run the division, and</p> <p>17 that was my strong recommendation. And I</p> <p>18 actually asked, suggested that we shut it down.</p> <p>19 She said well, is it permanent that we would</p> <p>20 shut it down? And I said nothing's permanent</p> <p>21 but we need to shut it down. We need to stop</p> <p>22 it. We need to just fix this. This is not fair</p> <p>23 to our patients. It's not fair to the rest of</p> <p>24 our staff. We need to fix it.</p> <p>25 We had a conversation about that, and she</p>	<p style="text-align: right;">52</p> <p>1 there was a decision that they would no longer</p> <p>2 recruit nurses?</p> <p>3 A Any staff.</p> <p>4 Q Any staff. And who said that?</p> <p>5 A That would have been Belinda Peavey who I</p> <p>6 believe at the time was the Vice President of</p> <p>7 Recruiting or some part of the HR function.</p> <p>8 Q What is she now?</p> <p>9 A She's a VP of something in HR. We have lots of</p> <p>10 VPs. I'm one, too.</p> <p>11 Q Congratulations.</p> <p>12 A No. It's no big deal. We were like a bank.</p> <p>13 (Discussion off the record)</p> <p>14 Q Exhibit 3 will be one page document 9582 which</p> <p>15 is April 19, 2017 email.</p> <p>16 (Exhibit 3 marked for identification)</p> <p>17 Q The bottom of this document is an April 19 email</p> <p>18 that you sent to Leslie DeMars and Heather</p> <p>19 Gunnell, correct?</p> <p>20 A That's correct.</p> <p>21 Q And then at the top there's an email from</p> <p>22 Heather Gunnell to you and Leslie DeMars, right?</p> <p>23 A Right.</p> <p>24 Q Okay. And Heather Gunnell says that she has</p> <p>25 prepared a brief staffing plan for both a</p>

13 (Pages 49 to 52)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">53</p> <p>1 complete shutdown and a rebuild, correct?</p> <p>2 A Yes.</p> <p>3 Q And then she says my assumption is that MBP will</p> <p>4 be refocused to Gyn U/S. Do you understand that</p> <p>5 MBP is Dr. Porter?</p> <p>6 A That would be my understanding, yes.</p> <p>7 Q And what is Gyn U/S?</p> <p>8 A I know what Gyn is.</p> <p>9 Q So Gynecology department presumably?</p> <p>10 A Yes. I believe the U/S would be ultrasound.</p> <p>11 Q Okay. Prior to receiving this April 19 email,</p> <p>12 had there been any discussions you knew of about</p> <p>13 Dr. Porter staying at Dartmouth-Hitchcock doing</p> <p>14 ultrasound work?</p> <p>15 A I don't know about prior to this.</p> <p>16 Coincidentally or subsequent to this there were,</p> <p>17 I was aware of conversations that Leslie was</p> <p>18 considering as an option to keep Misty to do</p> <p>19 some GYN ultrasound work.</p> <p>20 Q How did you become aware of that?</p> <p>21 A Through conversations, maybe through this.</p> <p>22 Maybe I asked a question, but just a general</p> <p>23 conversation. May be other emails. I don't</p> <p>24 recall.</p> <p>25 Q Do you recall at any point Leslie DeMars</p>	<p style="text-align: right;">55</p> <p>1 Q Okay. So at least roughly in mid-April, Leslie</p> <p>2 DeMars is saying there's an option of keeping</p> <p>3 Dr. Porter and having her do ultrasound in the</p> <p>4 gynecology department, right?</p> <p>5 A That's correct.</p> <p>6 Q Was there any discussion about the demand for</p> <p>7 that work?</p> <p>8 A I believe subsequently there was conversations</p> <p>9 about the demand and the viability of having</p> <p>10 this work done by Dr. Porter since the work had</p> <p>11 already been, was already being done. So there</p> <p>12 was no new, there was no new volume, no new</p> <p>13 demand. This work was already being taken care</p> <p>14 of by the radiology team.</p> <p>15 Q How do you know that?</p> <p>16 A Based on conversations that we had subsequent to</p> <p>17 this.</p> <p>18 Q With whom?</p> <p>19 A With Leslie and with Heather and we pulled data.</p> <p>20 So remember, that would be my job is to look at</p> <p>21 the budgets and to look at options so we looked</p> <p>22 at whether this was to reflect new demand, and</p> <p>23 it was not to reflect new demand.</p> <p>24 Q Right. So were there patients in the REI</p> <p>25 Division who needed ultrasounds read?</p>
<p style="text-align: right;">54</p> <p>1 discussing Misty Porter's ability to do</p> <p>2 ultrasound work?</p> <p>3 A Yes.</p> <p>4 Q What did she say?</p> <p>5 A She said that Misty was very capable of doing</p> <p>6 GYN ultrasound.</p> <p>7 Q Besides saying she was very capable, did she</p> <p>8 elaborate at all?</p> <p>9 A I don't recall that we did.</p> <p>10 Q So there was at least some discussion where Dr.</p> <p>11 DeMars is saying if there's a shutdown, we can</p> <p>12 keep Dr. Porter.</p> <p>13 A It was more of a potential option. Just an</p> <p>14 option. There was no plans to do it. It was</p> <p>15 just an option.</p> <p>16 Q But at least as of April 19, Heather Gunnell is</p> <p>17 assuming that Misty Porter is going to continue</p> <p>18 to do ultrasound at GYN; is that right?</p> <p>19 A That's what this says. I'm not aware of that.</p> <p>20 Q Any reason to believe that that's not what she</p> <p>21 was considering at the time?</p> <p>22 A I believe that it's possible she was just</p> <p>23 reflecting conversations that she'd had with</p> <p>24 Leslie as a desire, as an option. It was never</p> <p>25 planned in my mind.</p>	<p style="text-align: right;">56</p> <p>1 A Yes.</p> <p>2 Q Did you understand that Dr. Porter was the</p> <p>3 person who did the ultrasound reading?</p> <p>4 A Not exclusively, no.</p> <p>5 Q Who else in the REI Division could do that?</p> <p>6 A I don't know if anyone in the REI Division, but</p> <p>7 they were being read. There were other people</p> <p>8 in the organization capable of doing those</p> <p>9 readings.</p> <p>10 Q Did you understand that there were other people</p> <p>11 in the organization who were as capable as</p> <p>12 Dr. Porter in reading ultrasounds?</p> <p>13 A I would say neither as capable or less capable.</p> <p>14 I have no knowledge.</p> <p>15 Q You don't know whether she was the best?</p> <p>16 A I don't know.</p> <p>17 Q No idea.</p> <p>18 A No.</p> <p>19 Q You said you did an analysis of whether there</p> <p>20 was sufficient demand for her to do this work.</p> <p>21 A I believe we did some conversations, some</p> <p>22 analysis, some levels of look at -- you know,</p> <p>23 analysis might be the wrong word. Analysis</p> <p>24 might simply have been is this new demand and</p> <p>25 there was no new demand. This was the existing</p>

14 (Pages 53 to 56)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">57</p> <p>1 population of patients.</p> <p>2 Q Do you believe that there was not a formal</p> <p>3 analysis but rather the kind of discussion you</p> <p>4 just described?</p> <p>5 A I believe, I don't recall seeing a formal</p> <p>6 analysis. I do know that I asked the question</p> <p>7 about whether this was new demand and there may</p> <p>8 be more, but I'm not aware of any.</p> <p>9 Q Who was the question asked of?</p> <p>10 A I would have asked Heather and Leslie.</p> <p>11 Q At some point did Leslie DeMars make a</p> <p>12 recommendation about whether or not to keep</p> <p>13 Dr. Porter to do OB/GYN ultrasound readings?</p> <p>14 A I don't know if she -- so ask the question</p> <p>15 again?</p> <p>16 Q Sure. What I want to know is, you've got this</p> <p>17 reference here in the email, Heather Gunnell is</p> <p>18 assuming that Misty Porter is going to continue</p> <p>19 and going to do ultrasound readings within the</p> <p>20 GYN department, right?</p> <p>21 A Based on this email.</p> <p>22 Q Right. Okay. And you're saying that Leslie</p> <p>23 DeMars at some point was saying hey, there might</p> <p>24 be a position for Dr. Porter.</p> <p>25 A As an option, yes.</p>	<p style="text-align: right;">59</p> <p>1 can do?</p> <p>2 A I don't recall specifically. Perhaps. I think</p> <p>3 there were times when she did indicate that</p> <p>4 Dr. Porter was a very proficient staff member</p> <p>5 and could technically do some things better than</p> <p>6 others.</p> <p>7 Q All right. Did she elaborate on what type of</p> <p>8 surgery and what the demand was for that surgery</p> <p>9 and what would people do if she wasn't here to</p> <p>10 perform it?</p> <p>11 A I don't recall any specifics about that.</p> <p>12 Q Generally?</p> <p>13 A I don't know.</p> <p>14 Q I want to make sure. So at some point in this</p> <p>15 process you think Dr. DeMars said word to the</p> <p>16 effect of Dr. Porter is a particularly talented</p> <p>17 surgeon, and there's work that she can do that</p> <p>18 other people can't?</p> <p>19 A I wouldn't characterize it that way.</p> <p>20 Q How would you characterize it?</p> <p>21 A That is there a way we could keep Dr. DeMars.</p> <p>22 Q Dr. Porter, you mean?</p> <p>23 A I mean Dr. Porter. And she's skilled at</p> <p>24 ultrasound, and there's other things. I don't</p> <p>25 recall that she was saying she's the only one</p>
<p style="text-align: right;">58</p> <p>1 Q As an option. All right. Did there come a time</p> <p>2 when Leslie DeMars weighed in, made some</p> <p>3 statement either for or against this idea of</p> <p>4 Dr. Porter continuing as an employee doing</p> <p>5 principally ultrasounds?</p> <p>6 A I believe she had multiple conversations and</p> <p>7 both put it forth as an option and also put it</p> <p>8 forth as not really a practical opening. I</p> <p>9 believe that this was more of a conversation and</p> <p>10 not a decision.</p> <p>11 Q Did she end up on one side of the ledger or the</p> <p>12 other? Either keep her or not keep her?</p> <p>13 A Well, I suspect since she's no longer employed</p> <p>14 she made the decision not to keep her.</p> <p>15 Q Do you have a recollection --</p> <p>16 A I don't.</p> <p>17 Q Let me finish. Let me get the question out.</p> <p>18 Do you have a recollection of Dr. DeMars</p> <p>19 ultimately concluding that there would not be a</p> <p>20 position for Dr. Porter?</p> <p>21 A I don't recall the specific conversation or</p> <p>22 specific discussion.</p> <p>23 Q All right. Did Dr. DeMars at some point say to</p> <p>24 you that Dr. Porter is capable of performing</p> <p>25 certain types of surgery that nobody else here</p>	<p style="text-align: right;">60</p> <p>1 who could do things. I think she was more</p> <p>2 saying there are skills that she can do. I know</p> <p>3 there's a distinction, but --</p> <p>4 Q I'm just trying to figure out what you recall</p> <p>5 she's saying. That's all. So the discussion</p> <p>6 was she's a skilled surgeon and particularly</p> <p>7 talented doing ultrasound readings, right?</p> <p>8 MR. SCHROEDER: Objection. I think that</p> <p>9 mischaracterizes his testimony.</p> <p>10 A I'm not, so she never said, other than the</p> <p>11 ultrasound, she never said that Dr. Porter was</p> <p>12 better than anybody else. Just that she was</p> <p>13 capable of other surgeries.</p> <p>14 Q All right.</p> <p>15 A She did say she was very proficient at</p> <p>16 ultrasound GYN.</p> <p>17 Q So it's the ultrasound she's the best, nobody's</p> <p>18 any --</p> <p>19 A She's very proficient.</p> <p>20 MR. SCHROEDER: Objection.</p> <p>21 Q Very proficient.</p> <p>22 MR. SCHROEDER: Mischaracterizes testimony.</p> <p>23 Q Okay. And as to the surgery, she said she's</p> <p>24 very proficient or just --</p> <p>25 A She's capable.</p>

15 (Pages 57 to 60)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">61</p> <p>1 Q Capable. Okay. Was there any discussion with</p> <p>2 Leslie DeMars about whether Dr. Porter would be</p> <p>3 able to have sufficient work if she remained as</p> <p>4 an employee?</p> <p>5 A Well, ask that question slightly different. I'm</p> <p>6 not sure how to answer that question.</p> <p>7 Q Well, at the time of the decision that we've</p> <p>8 been talking about, Dr. Porter was reading</p> <p>9 ultrasounds, right?</p> <p>10 A I believe that's true. I'm not sure.</p> <p>11 Q Right. I understand you didn't look over her</p> <p>12 shoulder.</p> <p>13 A Correct.</p> <p>14 Q But you understood based on what people were</p> <p>15 doing, Misty Porter is doing ultrasound</p> <p>16 readings, right?</p> <p>17 A That she was doing some ultrasound readings. I</p> <p>18 don't know the volume.</p> <p>19 Q I understand you may not know the volume, but</p> <p>20 you knew that she was at least doing some</p> <p>21 ultrasound readings, right?</p> <p>22 A I believe she was doing some ultrasound</p> <p>23 readings.</p> <p>24 Q That's what you were told.</p> <p>25 A I believe that's true.</p>	<p style="text-align: right;">63</p> <p>1 (Exhibit 4 marked for identification)</p> <p>2 Q I'll show you what's been marked as Exhibit 4.</p> <p>3 So the bottom --</p> <p>4 A Can I finish reading?</p> <p>5 Q I'm sorry.</p> <p>6 A Okay. Thank you.</p> <p>7 Q By April 21, 2017, when Heather Gunnell writes</p> <p>8 you this response, did you understand that the</p> <p>9 decision had been made to proceed to close the</p> <p>10 REI Division?</p> <p>11 A The decision had either been made or was, we'd</p> <p>12 had conversations that it was going in that</p> <p>13 direction and we were making plans to</p> <p>14 communicate, yes.</p> <p>15 MR. SCHROEDER: This appears to be an</p> <p>16 incomplete document. There's other documents</p> <p>17 attached to it.</p> <p>18 MR. VITT: Why don't we take a quick break</p> <p>19 and find that, and I'm going to get the menu</p> <p>20 again.</p> <p>21 (Recess taken 11:24 - 11:38 a.m.)</p> <p>22 Q We'll mark the full package of documents as</p> <p>23 Exhibit 5. And they run pages 9574 through 76,</p> <p>24 and then there's some four additional pages in</p> <p>25 native format that are not Bates numbered.</p>
<p style="text-align: right;">62</p> <p>1 Q Did you have any information about the extent or</p> <p>2 the volume of the ultrasound readings that she</p> <p>3 was doing?</p> <p>4 A No.</p> <p>5 Q Did Dr. DeMars say anything about what the</p> <p>6 demand would be for ultrasound readings if the</p> <p>7 REI Division closed?</p> <p>8 A I don't recall that we had that conversation.</p> <p>9 Q On the surgery, did Dr. DeMars have a discussion</p> <p>10 that you're aware of about whether the surgery</p> <p>11 that Misty Porter could do would continue to be</p> <p>12 done at Dartmouth-Hitchcock even if the REI</p> <p>13 Division closed?</p> <p>14 A Not specifically, no.</p> <p>15 Q Generally?</p> <p>16 A No.</p> <p>17 Q Would it be accurate to say that at least as of</p> <p>18 April 19, 2017, there had been no decision that</p> <p>19 you were aware of about whether or not Misty</p> <p>20 Porter would remain an employee at</p> <p>21 Dartmouth-Hitchcock?</p> <p>22 A I believe that's true.</p> <p>23 Q We'll mark as Exhibit 4 a one-page document.</p> <p>24 9574 is the Bates number, and it's an April 19,</p> <p>25 2017, email, and a response on April 21.</p>	<p style="text-align: right;">64</p> <p>1 (Exhibit 5 marked for identification)</p> <p>2 Q So what I have done is to mark Exhibit 5, a</p> <p>3 document that had the emails we were looking at</p> <p>4 before plus what I believe are the attachments</p> <p>5 that are referenced in that document. Have you</p> <p>6 had a chance to just look through those?</p> <p>7 A I have. Yes.</p> <p>8 Q Do those appear to be the attachments?</p> <p>9 A Yes. They do.</p> <p>10 Q Okay. If you go to the page, third unnumbered</p> <p>11 page so it has the number of new patients who</p> <p>12 are scheduled, that would be 8, correct?</p> <p>13 A Correct.</p> <p>14 Q And then there are patients who are scheduled</p> <p>15 for care beyond April 30 and that's 102</p> <p>16 patients, correct?</p> <p>17 A Correct.</p> <p>18 Q And then it says new patient referrals not</p> <p>19 scheduled, 28.</p> <p>20 A That's correct.</p> <p>21 Q What is that reference, "new patient referrals</p> <p>22 not scheduled"?</p> <p>23 A So those are patients that have been referred</p> <p>24 into the program for treatment, but we have not</p> <p>25 yet scheduled them in for any work. So we know</p>

16 (Pages 61 to 64)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">65</p> <p>1 who they are, but we haven't actually had any</p> <p>2 formal contact with them.</p> <p>3 Q Then the next page is labeled Staffing Plan,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q And at least as of April 21, the future staff</p> <p>7 with complete REI shutdown consists of two</p> <p>8 people, right?</p> <p>9 A Yes. 1.4, I think, is right.</p> <p>10 Q So MBP that would be a .4, correct?</p> <p>11 A Yes.</p> <p>12 Q And Elizabeth Todd would be 1.0, correct?</p> <p>13 A That's correct.</p> <p>14 Q Were you involved in any discussions about</p> <p>15 whether or not Elizabeth Todd should be kept as</p> <p>16 an employee?</p> <p>17 A No.</p> <p>18 Q Do you know why at least that is as of this</p> <p>19 point it was proposed that she be kept in a 1.0</p> <p>20 position?</p> <p>21 A No. This was a proposal. One of the proposals.</p> <p>22 Q Okay. She in fact was kept as an employee. Do</p> <p>23 you know why?</p> <p>24 A I don't.</p> <p>25 Q Would it be accurate to say that you were not</p>	<p style="text-align: right;">67</p> <p>1 A Yes.</p> <p>2 Q Who is she?</p> <p>3 A So Sam Fields, I believe as I mentioned earlier,</p> <p>4 is the Vice President for Operational</p> <p>5 Excellence, and at that point I believe that</p> <p>6 Alison Mumford was the Director of Operational</p> <p>7 Excellence and would have been the one who would</p> <p>8 actually be hands-on involved in moving forward</p> <p>9 with supporting any type of initiative.</p> <p>10 Q Okay. In Heather Gunnell's email to you, she</p> <p>11 writes, "We identified where each staff member</p> <p>12 will need to go and I will send that to Aimee.</p> <p>13 We should keep in mind that our plan for people</p> <p>14 may be altered depending on what happens with</p> <p>15 the meds investigation."</p> <p>16 Let me ask, Aimee is Aimee Giglio?</p> <p>17 A Yes.</p> <p>18 Q And she's in HR?</p> <p>19 A She is. Yes.</p> <p>20 Q And then the next sentence refers to perhaps</p> <p>21 there being changes depending on what happens</p> <p>22 with the meds investigation. What is that?</p> <p>23 A So I don't have any direct knowledge. I have no</p> <p>24 firsthand knowledge. I understand there was</p> <p>25 some investigation related to meds in the REI</p>
<p style="text-align: right;">66</p> <p>1 involved in any discussions about whether or not</p> <p>2 to keep her?</p> <p>3 A Only to the extent that they would have</p> <p>4 demonstrated to me that there was a need from a</p> <p>5 business standpoint.</p> <p>6 Q And how would they do that?</p> <p>7 A Well, if we were to, we would, I'm assuming that</p> <p>8 we would review this, and I would say why are we</p> <p>9 keeping these people, and they would say well,</p> <p>10 we're got this number of patients that are in</p> <p>11 the backlog or they would give me some</p> <p>12 information that would be valuable. And if it</p> <p>13 made sense to me, I would say okay, move on.</p> <p>14 Q So you think that that discussion, the way you</p> <p>15 just described it, probably occurred but you</p> <p>16 don't recall it.</p> <p>17 A It's likely that occurred, but I don't recall</p> <p>18 it.</p> <p>19 Q And that would also be true about keeping Dr.</p> <p>20 Porter as a .4?</p> <p>21 A I would have to say it's likely, but I don't</p> <p>22 recall.</p> <p>23 Q Okay. There's a reference on the first page of</p> <p>24 Exhibit 5. This is the Heather Gunnell email to</p> <p>25 you about Alison Mumford being involved?</p>	<p style="text-align: right;">68</p> <p>1 investigation, but I never got any of the</p> <p>2 details. I didn't need to know.</p> <p>3 Q And whatever the information provided to you,</p> <p>4 who did that?</p> <p>5 A I believe Heather.</p> <p>6 Q Did you understand that she was involved in some</p> <p>7 shape, manner or form with that investigation?</p> <p>8 A I believe she was aware of it.</p> <p>9 Q Who was handling the investigation?</p> <p>10 A I believe our internal pharmacy people.</p> <p>11 Q In broad strokes, what did you understand it</p> <p>12 concerned?</p> <p>13 A I understand that there had been some meds</p> <p>14 uncovered in a storage closet that were for</p> <p>15 multiple patients, and they were in a bag, and</p> <p>16 it was unclear why they were there.</p> <p>17 Q Was there a resolution that you're aware of?</p> <p>18 A Not aware. I mean, I'm sure they finished their</p> <p>19 investigation, but I don't know what the outcome</p> <p>20 was.</p> <p>21 Q Okay. We'll mark as Exhibit 6 an email from</p> <p>22 Daniel Herrick to Heather Gunnell, page 9572 and</p> <p>23 then there's 9573 indicates that a document has</p> <p>24 been produced in native format, and then there</p> <p>25 are five pages attached to that.</p>

17 (Pages 65 to 68)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">69</p> <p>1 (Exhibit 6 marked for identification)</p> <p>2 Q I'll give you what's been marked as Exhibit 6.</p> <p>3 First page is an email you sent to Heather</p> <p>4 Gunnell, correct?</p> <p>5 A Um-hum. Yes.</p> <p>6 Q And you've looked through the document, and is</p> <p>7 it accurate to say that the Assumptions document</p> <p>8 which is the third page is one that you worked</p> <p>9 on?</p> <p>10 A I would say anything that has DPH on the bottom</p> <p>11 right-hand corner is my file, that I created it,</p> <p>12 yes.</p> <p>13 Q When you created a document, was it your</p> <p>14 practice to indicate on that document that by</p> <p>15 putting your initials or doing something else</p> <p>16 that it was something you generated?</p> <p>17 A I have a little bit of OCD so yes, I typically</p> <p>18 do that. Maybe more than a little.</p> <p>19 Q You begin with the Assumptions by saying that</p> <p>20 the "Current staffing issues have rendered the</p> <p>21 REI program unsustainable resulting in</p> <p>22 unacceptable levels of care for our patient</p> <p>23 population as well as marginal financial</p> <p>24 viability."</p> <p>25 Are the staffing issues you referred to</p>	<p style="text-align: right;">71</p> <p>1 A So as I just said, each provider had their own</p> <p>2 nurse and had their own protocols and their own</p> <p>3 processes for how they did things, how they</p> <p>4 documented them, the sequence that they did,</p> <p>5 what meds they would prescribe, how they would</p> <p>6 go about treating their patients; and what we</p> <p>7 were trying to do is separate the operational</p> <p>8 issues from the clinical issues and say from an</p> <p>9 operations standpoint everybody should be doing</p> <p>10 everything the same way. We should be using the</p> <p>11 same documentation, same checklist, the same</p> <p>12 sequence of work. And then the clinical side in</p> <p>13 terms of which meds might be best for the</p> <p>14 patient would be still left to the providers.</p> <p>15 Q So in the REI Division at the time there were</p> <p>16 three principal physicians as we talked about,</p> <p>17 right?</p> <p>18 A Correct.</p> <p>19 Q Two of those were hired by Dr. DeMars.</p> <p>20 Recruited them, interviewed them and hired them.</p> <p>21 Albert Hsu and David Seifer. At any point did</p> <p>22 someone ask her words to the effect of how did</p> <p>23 you manage to hire people like this in the</p> <p>24 division?</p> <p>25 A I'm not aware of any, of that type of</p>
<p style="text-align: right;">70</p> <p>1 here what you were talking about earlier; that</p> <p>2 is, couldn't get people on the same page?</p> <p>3 A That's correct. Staffing and productivity,</p> <p>4 throughput, the dysfunctional organization.</p> <p>5 Q You mentioned productivity. Is that principally</p> <p>6 the doctors, the physicians?</p> <p>7 A No. It's everybody. It's access. It's getting</p> <p>8 patients in to see nurses. It's having</p> <p>9 nurses -- with three physicians, we had three</p> <p>10 nurses and each nurse was dedicated to that</p> <p>11 physician only. If that nurse was out, then the</p> <p>12 phone call for that physician would go to</p> <p>13 voicemail. Part of the standard work that the</p> <p>14 Value Institute was attempting to input would</p> <p>15 have been having all of the nurses in a pool and</p> <p>16 having them support all of the providers.</p> <p>17 That's an example of some of the</p> <p>18 dysfunction that we were unable to resolve, and</p> <p>19 that drives the staffing issues. That was part</p> <p>20 of the reason that people were leaving, and</p> <p>21 that's also part of the level of care that was</p> <p>22 unsustainable or unacceptable for our patients.</p> <p>23 Q In the next sentence you talk about there being</p> <p>24 "patient care variations between providers and</p> <p>25 staff." What does that mean?</p>	<p style="text-align: right;">72</p> <p>1 conversation.</p> <p>2 Q Did she express any responsibility for the</p> <p>3 dysfunctional nature of the REI Division?</p> <p>4 A No.</p> <p>5 Q Did anyone ask her words to the effect of how</p> <p>6 did this happen? You're running this division.</p> <p>7 It's kind of a standard question. It's your</p> <p>8 division. What happened?</p> <p>9 A Others may have. I never asked that question.</p> <p>10 I'm not aware of anybody asking that question.</p> <p>11 Q Did you hear her say anything about being</p> <p>12 partially responsible for this situation?</p> <p>13 A She took ownership as the Chair much like</p> <p>14 anybody would take ownership of their own</p> <p>15 organization.</p> <p>16 Q When you say "took ownership," what does that</p> <p>17 mean?</p> <p>18 A That means she accepted responsibility for the</p> <p>19 overall failure of the organization that drove</p> <p>20 us to this decision.</p> <p>21 Q I want to come back to something I asked a</p> <p>22 moment ago. I want to make sure I've got this</p> <p>23 right. At no point in these discussions did</p> <p>24 anyone focus on the competence or lack of</p> <p>25 competence of the physicians in the REI</p>

18 (Pages 69 to 72)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">73</p> <p>1 Division; is that right?</p> <p>2 A I'm unaware. So I was focused on the process,</p> <p>3 the dysfunction. We brought in the Value</p> <p>4 Institute, we brought in the HR people that were</p> <p>5 unable to fix it. I recommended that we shut it</p> <p>6 down. I really, not that I'm not curious, but</p> <p>7 how we got here was not of concern to me. What</p> <p>8 we were going to do next was my primary concern.</p> <p>9 Perhaps my sole concern. Assigning blame was</p> <p>10 not anything I'm interested in at this point in</p> <p>11 time.</p> <p>12 Q The last bullet point on this page we've been</p> <p>13 talking about, you write "Embedded in this is</p> <p>14 the decision is a plan to maintain our current</p> <p>15 lab operations, in conjunction with UVM."</p> <p>16 So what did you mean by that?</p> <p>17 A So the lab is where we store our embryos, eggs,</p> <p>18 our sperm. That function is and has had at the</p> <p>19 time was being comanaged, well, managed in</p> <p>20 collaboration with UVM in the sense that we had</p> <p>21 Navid who was running that and was also doing</p> <p>22 work for UVM. He was, he was our Lab Director</p> <p>23 and he was also our Lab Director on a PSA,</p> <p>24 personal service agreement, between us. And we</p> <p>25 collaborated with UVM to be sure that we could</p>	<p style="text-align: right;">75</p> <p>1 that role with the appointment of Ilana Cass.</p> <p>2 That body of work will now transfer over to Dr.</p> <p>3 Cass.</p> <p>4 (Exhibit 7 marked for identification)</p> <p>5 Q I've marked as Exhibit 7 a two-page document,</p> <p>6 25744 to 45. It's an email from Leslie DeMars</p> <p>7 to you. Have you read it?</p> <p>8 A I read it.</p> <p>9 Q Prior to me handing you this document, if I'd</p> <p>10 asked you a question essentially do you recall</p> <p>11 Leslie DeMars writing this email, would have you</p> <p>12 recalled?</p> <p>13 A No.</p> <p>14 Q She begins by saying Daniel, does she call you</p> <p>15 Daniel?</p> <p>16 A Yes. Everybody calls me Daniel. Well, among</p> <p>17 other things, but --</p> <p>18 Q "You obviously have a good sense of Ed, and he</p> <p>19 is furious at me, but there are some issues that</p> <p>20 he has to understand in order to get to yes and</p> <p>21 hiring Dan Grow in some capacity asap."</p> <p>22 Was Ed Merrens furious with Leslie DeMars?</p> <p>23 A I don't know. He'd have to answer that.</p> <p>24 Q Did he say anything to suggest that he was</p> <p>25 furious?</p>
<p style="text-align: right;">74</p> <p>1 maintain this work and that Navid would continue</p> <p>2 to do work both here and there so we could keep</p> <p>3 both labs running.</p> <p>4 We felt that it was important to provide</p> <p>5 continuity for our patients and their specimens,</p> <p>6 and that was part of our plan to provide the</p> <p>7 maximum level of care for our patients and also</p> <p>8 position us to reinvigorate the REI program at</p> <p>9 some later date.</p> <p>10 Q And you needed to have a lab in place if you're</p> <p>11 going to reinvigorate?</p> <p>12 A Yes. Yes. That's my understanding.</p> <p>13 Q Was the business and operating plan to restart</p> <p>14 the program going to be done internally? Did</p> <p>15 you expect people at Dartmouth-Hitchcock to</p> <p>16 prepare that plan?</p> <p>17 A Yes.</p> <p>18 Q And is that plan still in process?</p> <p>19 A Yes.</p> <p>20 Q Being prepared?</p> <p>21 A There is some work that's been done, yes.</p> <p>22 Q Who did that work?</p> <p>23 A It was headed up by the Interim Chair of OB/GYN,</p> <p>24 Liz Erekson, who was Interim Chair for</p> <p>25 approximately a year. Just stepped down from</p>	<p style="text-align: right;">76</p> <p>1 A Not to me. I don't recall.</p> <p>2 Q So you don't recall him one way or the other,</p> <p>3 being furious, happy or annoyed, nothing like</p> <p>4 that?</p> <p>5 A I don't ever remembering seeing Ed furious,</p> <p>6 first of all, and I don't think that if he was</p> <p>7 upset with one of his chairs that he would share</p> <p>8 that with me.</p> <p>9 Q She goes on to talk about Dan Grow having offers</p> <p>10 from the Mayo Clinic and Yale, and we need to</p> <p>11 make a decision, correct?</p> <p>12 A That's what it says, yes.</p> <p>13 Q Can you explain why as of this date there hadn't</p> <p>14 been some resolution about whether or not to</p> <p>15 offer this guy a job?</p> <p>16 A We were never going to offer him a job.</p> <p>17 Q So why keep this guy hanging?</p> <p>18 A The institution was not negotiating with Dan</p> <p>19 Grow. Leslie was having conversations with Dan</p> <p>20 Grow and trying desperately to get the</p> <p>21 organization to embrace this concept, and we</p> <p>22 were not going to do that.</p> <p>23 Q Did you understand that as of April 25 she had</p> <p>24 been told in no uncertain terms that the</p> <p>25 institution had no interest in hiring this</p>

19 (Pages 73 to 76)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">77</p> <p>1 person?</p> <p>2 A Yes.</p> <p>3 Q And in this paragraph Leslie DeMars says, "When</p> <p>4 Aimee Giglio said we've never closed" --</p> <p>5 A Just so you know it's Giglio.</p> <p>6 Q Giglio?</p> <p>7 A In case you meet with her.</p> <p>8 Q I appreciate that.</p> <p>9 MR. SCHROEDER: It's like the island.</p> <p>10 Q Aimee Giglio. Is that better? Said, quote,</p> <p>11 "we've never closed a service at DH before," she</p> <p>12 made an inflammatory statement.</p> <p>13 Did you hear her say that?</p> <p>14 A I never heard her say that, no.</p> <p>15 Q In the fourth paragraph she says, "While David,"</p> <p>16 that's David Seifer?</p> <p>17 A I believe that might be -- well, yes, I believe</p> <p>18 that's true. So just to be clear, in the</p> <p>19 paragraph above where he talks about Axelrod,</p> <p>20 his name is David Axelrod as well so --</p> <p>21 Q Right. But I think she's talking about David</p> <p>22 Seifer here, right? We can agree?</p> <p>23 A I believe she is.</p> <p>24 Q Okay. I mean, Misty Porter had nothing do with</p> <p>25 David Axelrod.</p>	<p style="text-align: right;">79</p> <p>1 A I believe they've worked together, I believe</p> <p>2 that Misty and Leslie were peers before Leslie</p> <p>3 became the Chair.</p> <p>4 Q Right.</p> <p>5 A And that they've had a long personal</p> <p>6 relationship, and it appears that she's saying</p> <p>7 that Misty could have done something to save the</p> <p>8 division, and it's unclear what that would be</p> <p>9 because all of the reasons that I recommended we</p> <p>10 shut it down are reasons that are valid based on</p> <p>11 performance.</p> <p>12 Q So when Leslie DeMars, at the time she was Chair</p> <p>13 of the OB/GYN Department?</p> <p>14 A That's correct.</p> <p>15 Q So she's saying hey, Misty can do something to</p> <p>16 save the division, she can be the savior, what</p> <p>17 is she supposed to do?</p> <p>18 A I don't know. I mean, you'll have to ask</p> <p>19 Leslie. I'm not going to presume to speak for</p> <p>20 her.</p> <p>21 Q So you say you didn't follow up on this? Why</p> <p>22 not?</p> <p>23 A I didn't follow up directly with Leslie. I felt</p> <p>24 this was more of a weekend download or an</p> <p>25 overnight download and that there was no real,</p>
<p style="text-align: right;">78</p> <p>1 A That's correct. When I first read it through</p> <p>2 here, I jumped to David Axelrod. That's why</p> <p>3 I'm -- you're right.</p> <p>4 Q Okay. She says, "While David is not a good</p> <p>5 leader, his failure is also the result of a</p> <p>6 masterful takedown by Misty Porter. If she had</p> <p>7 wanted to support him, she would have made the</p> <p>8 division successful."</p> <p>9 What do you understand Dr. Porter did to</p> <p>10 take down David Seifer?</p> <p>11 A I don't know. This is Leslie writing this. I</p> <p>12 have no idea.</p> <p>13 Q Did you ask her?</p> <p>14 A I did not. I did not follow up on this email.</p> <p>15 Q And she goes on to express the view that if she</p> <p>16 had wanted to support him, quote, "she would</p> <p>17 have made the division successful." How would</p> <p>18 she do that?</p> <p>19 A I don't know. You'd have to ask Leslie.</p> <p>20 Q You have no idea.</p> <p>21 A I don't. I don't know.</p> <p>22 Q And she goes on to say "Misty is counting on her</p> <p>23 longevity and my friendship to come in as the</p> <p>24 savior of the division."</p> <p>25 Do you know what she's referring to there?</p>	<p style="text-align: right;">80</p> <p>1 there was no real action item for me to take</p> <p>2 here. I knew we were not going to hire Dan</p> <p>3 Grow. The rest of this talks about her opinion</p> <p>4 as to what's going on. And her personal</p> <p>5 relationship with Leslie, you know, this was, I</p> <p>6 just felt this was, there was nothing there for</p> <p>7 me to do with this. So I didn't specifically go</p> <p>8 back to Leslie and say let's go through this and</p> <p>9 tell me what you're thinking.</p> <p>10 Q Would you agree that a reasonable interpretation</p> <p>11 of at the start of this email is that she thinks</p> <p>12 that Dan Grow is still in the mix as somebody</p> <p>13 you might hire?</p> <p>14 A Yes.</p> <p>15 MR. SCHROEDER: Objection, calls for</p> <p>16 speculation.</p> <p>17 Q In the next paragraph she says Ed, meaning Ed</p> <p>18 Merrens, right? She said Merrens, correct?</p> <p>19 A I assume it is.</p> <p>20 Q Is also lumping Albert into, quote, "he's been a</p> <p>21 problem since day 1," close quote. Did you hear</p> <p>22 Ed Merrens say words to that effect?</p> <p>23 A No.</p> <p>24 Q And then she goes on to say again, "Misty has</p> <p>25 decided that she no longer wants to work with</p>

20 (Pages 77 to 80)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">81</p> <p>1 him or teach him, and she is bullying him."</p> <p>2 Did you hear her say anything to that</p> <p>3 effect?</p> <p>4 A Not until this, no.</p> <p>5 Q Not until you got this email?</p> <p>6 A No.</p> <p>7 Q So you've got the chair of a department saying</p> <p>8 that one of the physicians who works under her</p> <p>9 is bullying another physician. Shouldn't</p> <p>10 somebody in management be doing something about</p> <p>11 that?</p> <p>12 A Yes. Someone should.</p> <p>13 Q Who is that someone?</p> <p>14 A Not me.</p> <p>15 Q Okay. All right. Did you share this email with</p> <p>16 anyone else? Did you pass it along?</p> <p>17 A I may have. I don't recall.</p> <p>18 Q Do you think you did?</p> <p>19 A Well --</p> <p>20 MR. SCHROEDER: Objection. Asked and</p> <p>21 answered.</p> <p>22 A I don't recall that I did.</p> <p>23 Q All right. So you don't know one way or the</p> <p>24 other whether you passed it along?</p> <p>25 A I don't recall. I may have. If I did, I don't</p>	<p style="text-align: right;">83</p> <p>1 Q She goes on to say that "The nursing dysfunction</p> <p>2 is/was longstanding and preceded David. He</p> <p>3 didn't hire any of the nurses, and had little</p> <p>4 control over the splitting behavior that was in</p> <p>5 place."</p> <p>6 When there were the discussions with her</p> <p>7 about what to do, this is prior to the decision</p> <p>8 to close the shop down, were there conversations</p> <p>9 about ways of trying to remediate the situation</p> <p>10 within the division?</p> <p>11 A That would have been the work that was done with</p> <p>12 the Value Institute and the HR folks.</p> <p>13 Behavioral personnel folks. I was not involved</p> <p>14 in any of those conversations. I never went to</p> <p>15 the clinic. I never spoke to any of these</p> <p>16 people. I'm an administrator. I worked, I</p> <p>17 coordinated with Heather and Leslie to</p> <p>18 understand that. We brought the Value Institute</p> <p>19 in. I'm sure the Value Institute had lots of</p> <p>20 conversations about this. I know they did team</p> <p>21 building exercises and so on. I'm not aware of</p> <p>22 any of the specificity around that other than</p> <p>23 that the fact that that was the work they were</p> <p>24 doing to try to resolve this issue and that it</p> <p>25 ultimately failed.</p>
<p style="text-align: right;">82</p> <p>1 know to whom.</p> <p>2 Q Well, it would be a pretty small list of who you</p> <p>3 might pass it on to, right?</p> <p>4 A Yes, a very small list.</p> <p>5 Q She goes on to say that "David," that's David</p> <p>6 Seifer, "is a nudge who somehow lacks</p> <p>7 situational awareness, but he came into a</p> <p>8 dysfunctional division with half the team</p> <p>9 determined to make him fail."</p> <p>10 Prior to getting this email, had she said</p> <p>11 anything, words to that effect?</p> <p>12 A No.</p> <p>13 Q She says, "Despite the dysfunction, the</p> <p>14 pregnancy rates were excellent during 2016, and</p> <p>15 the lab is largely responsible for that."</p> <p>16 Do you know what she means by that?</p> <p>17 A I don't. I mean, I can only tell you what it</p> <p>18 says here, that the lab is very functional. I</p> <p>19 don't know -- the lab is largely responsible for</p> <p>20 that and the lab is very functional. Apparently</p> <p>21 that's what she's saying.</p> <p>22 Q But that issue, the issue that she's raising</p> <p>23 here, isn't one that she had raised with you</p> <p>24 before this email, right?</p> <p>25 A No.</p>	<p style="text-align: right;">84</p> <p>1 Q She goes on to report that, "We have to be very</p> <p>2 careful about the conditions under which we can</p> <p>3 terminate our providers. David's wife is a Pedi</p> <p>4 Endocrinologist who works mostly in Manchester.</p> <p>5 It is conceivable that he could join one of the</p> <p>6 Boston IVF practices (Lord help them) and</p> <p>7 compete directly for these patients."</p> <p>8 Was the issue that she addresses here of</p> <p>9 how you terminate providers something that was</p> <p>10 discussed?</p> <p>11 A It would have been out of my purview in terms of</p> <p>12 how we do it. Again, I put together the plan.</p> <p>13 I'm a bit of a mercenary. I basically said the</p> <p>14 program needs to shut down. Here's what we need</p> <p>15 to do, and each person has their own areas of</p> <p>16 responsibility. I don't own terminating</p> <p>17 physicians managing them. So I would have no</p> <p>18 action item here. This is, she's sharing her</p> <p>19 thoughts on this. I have no action items</p> <p>20 involved.</p> <p>21 Q Who would have been responsible for making the</p> <p>22 decisions about how providers were terminated?</p> <p>23 A That would have been with Leslie, Maria Padine,</p> <p>24 Aimee Giglio, Ed Merrens.</p> <p>25 Q Did you give the comments that she made about</p>

21 (Pages 81 to 84)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">85</p> <p>1 Dr. Porter any weight?</p> <p>2 A The same weight as I gave basically everything</p> <p>3 in this email.</p> <p>4 Q Doesn't sound like much.</p> <p>5 MR. SCHROEDER: Objection. Argumentative.</p> <p>6 A For the most part, the observations, opinions</p> <p>7 that she shared in here are outside of my direct</p> <p>8 responsibility and purview. And I've read this,</p> <p>9 I believe, with the idea that she's downloading</p> <p>10 and maybe feeling better about writing it.</p> <p>11 Throwing a Hail Mary perhaps. I don't know</p> <p>12 exactly what she was trying to do, but I don't</p> <p>13 want to say I didn't give it any weight. I</p> <p>14 would just say that it, as reading it I</p> <p>15 recognized that there were no action items or a</p> <p>16 very few action items in here for me to do so</p> <p>17 this was something that was for informational</p> <p>18 purposes. Although she may have been asking for</p> <p>19 it, there was nothing for me to do here.</p> <p>20 Q Did you credit the accuracy of what she was</p> <p>21 saying here or reach any judgment at all?</p> <p>22 A No.</p> <p>23 Q So you don't know whether she's spot-on or</p> <p>24 couldn't be more wrong in the observations she</p> <p>25 made here?</p>	<p style="text-align: right;">87</p> <p>1 A In the context of the rest of this? Serious? I</p> <p>2 don't know "extraordinary" is the right word.</p> <p>3 Again, as I said earlier, I only knew that they</p> <p>4 found a bag of meds in a closet with more than</p> <p>5 one patient's name on them, and that it went to</p> <p>6 investigation. I can only surmise or assume</p> <p>7 what this means, but I have no firsthand</p> <p>8 knowledge of the outcome of any of that work.</p> <p>9 Q So do you have any idea why her life and the</p> <p>10 messaging would be easier --</p> <p>11 A You'd have to ask her.</p> <p>12 Q No, I know. I get that. Let me get the</p> <p>13 question out so we've got a record here. Why</p> <p>14 her life and her messaging would be easier if</p> <p>15 Kacavas concludes that these doctors were</p> <p>16 responsible and they were facing loss of their</p> <p>17 license to practice medicine?</p> <p>18 A You'll have to ask her what she meant by that.</p> <p>19 Q You don't know?</p> <p>20 A I don't know. I don't know the extent of the</p> <p>21 investigation, the results of the investigation.</p> <p>22 I don't know how long it took. I don't know</p> <p>23 anything about that.</p> <p>24 Q I understand that you don't know about the</p> <p>25 investigation and you don't know who's</p>
<p style="text-align: right;">86</p> <p>1 A For the most part, that's true. I don't, I</p> <p>2 think it's true that the lab is very functional,</p> <p>3 and Navid is doing a great job. I think that's</p> <p>4 true. I think that I had some direct knowledge</p> <p>5 of that. I think for the most, the rest of</p> <p>6 this, I just don't have, I'm not close enough to</p> <p>7 the operation to know that this is accurate.</p> <p>8 Q So she's got comments about David Seifer and</p> <p>9 Albert Hsu, you don't know whether she's spot-on</p> <p>10 or totally wrong.</p> <p>11 A No. I'm absolutely convinced these are her</p> <p>12 opinions, and I have no idea the validity of</p> <p>13 them with the exception of Navid is very</p> <p>14 powerful and very strong in terms of running the</p> <p>15 lab.</p> <p>16 Q Go to the second page. Halfway down. She's got</p> <p>17 a, I'm not sure whether it's intentional or not,</p> <p>18 but in bold she has, quote, "My life and the</p> <p>19 messaging would be much easier if John Kakavas</p> <p>20 determines that all three providers are at fault</p> <p>21 in the medi diversion issue and are facing loss</p> <p>22 of license." That's quite a statement.</p> <p>23 MR. SCHROEDER: Is there a question?</p> <p>24 Q Did it strike you at the time that this is an</p> <p>25 extraordinary statement for her to be making?</p>	<p style="text-align: right;">88</p> <p>1 conducting it. I got all that. I was really</p> <p>2 focusing on she is saying here that the messages</p> <p>3 that she has to deliver would be a lot easier if</p> <p>4 she could say these three doctors screwed up and</p> <p>5 are losing their medical license. Isn't that</p> <p>6 what she's saying? I mean, as I read it here.</p> <p>7 I haven't talked to her.</p> <p>8 A Well, then that's -- I'm not going to argue with</p> <p>9 you. I'm not going to draw any conclusion.</p> <p>10 Q Well, neither one of us has spoken to her about</p> <p>11 what she said here.</p> <p>12 A No.</p> <p>13 Q Although you were communicating with her.</p> <p>14 A I was communicating with her, but I never asked</p> <p>15 her about this.</p> <p>16 Q Okay. And my question is at this point, that is</p> <p>17 as of, what's the date here, April 25, there was</p> <p>18 a decision had been made to close the REI</p> <p>19 Division, right?</p> <p>20 A That's correct.</p> <p>21 Q And that decision is going to have to be</p> <p>22 explained to a lot of people in the community,</p> <p>23 right?</p> <p>24 A That's correct.</p> <p>25 Q Lot of people who've benefited, kids, grandkids,</p>

22 (Pages 85 to 88)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">89</p> <p>1 you name it, coming out of the REI Division,</p> <p>2 correct?</p> <p>3 A I believe that's right.</p> <p>4 Q Right. So there's bound to be a lot of</p> <p>5 community agitation about the decision to close</p> <p>6 the REI Division, you knew that, didn't you?</p> <p>7 A Yes. I anticipated that there would be some</p> <p>8 community reaction.</p> <p>9 Q And one of the things that the institution was</p> <p>10 trying to do was figure out how do we message,</p> <p>11 how do we explain this decision, correct?</p> <p>12 A That's correct.</p> <p>13 Q So can you tell me why Dr. DeMars' message,</p> <p>14 quote, "would be much easier" if she could say</p> <p>15 these three doctors screwed up and they're</p> <p>16 losing their license to practice?</p> <p>17 A It's not clear to me what message she's talking</p> <p>18 about or who the audience is for that message.</p> <p>19 So I cannot draw that conclusion. There's a</p> <p>20 number of things that could, the message could</p> <p>21 refer to.</p> <p>22 Q And at no time after April 25 -- this is a</p> <p>23 question -- did you have a discussion with</p> <p>24 Leslie DeMars either face to face, over the</p> <p>25 phone, period, about the issue that I'm</p>	<p style="text-align: right;">91</p> <p>1 answer why we can't continue doing NPW and</p> <p>2 non-infertility evals." NPW is nonpregnant</p> <p>3 women?</p> <p>4 A I believe that's true.</p> <p>5 Q So was there a discussion that you can recall</p> <p>6 about Dartmouth-Hitchcock continuing to provide</p> <p>7 services to nonpregnant women and noninfertility</p> <p>8 evaluations?</p> <p>9 A Ask that again?</p> <p>10 Q Sure. What I think she's saying is I can</p> <p>11 explain why Dartmouth-Hitchcock is going to stop</p> <p>12 ART procedures. What's ART?</p> <p>13 A I don't know.</p> <p>14 Q All right.</p> <p>15 A I think I can guess, but I don't know.</p> <p>16 Q Well, give me your guess.</p> <p>17 A No. I don't want to guess.</p> <p>18 Q Okay.</p> <p>19 A You can give me your guess.</p> <p>20 MR. SCHROEDER: Assisted reproductive</p> <p>21 technology.</p> <p>22 Q I think that's right.</p> <p>23 MR. SCHROEDER: I know it's right.</p> <p>24 Q Well, then there we go. So we now have an</p> <p>25 answer. We squared that away.</p>
<p style="text-align: right;">90</p> <p>1 addressing here, that is, this investigation and</p> <p>2 these doctors --</p> <p>3 A About the med issue?</p> <p>4 Q Yes. About the med issue.</p> <p>5 A Not that I recall.</p> <p>6 Q And about these doctors possibly losing their</p> <p>7 license to practice?</p> <p>8 A I don't recall ever having a conversation about</p> <p>9 that.</p> <p>10 Q In the prior paragraph, Dr. DeMars says that</p> <p>11 "the messaging is very messy and we have</p> <p>12 patients who are about to start meds. The right</p> <p>13 thing to do is to postpone their cycles, but I</p> <p>14 need three levels of message that is fair, not</p> <p>15 inflammatory or defamatory, so that I can get</p> <p>16 working with UVM."</p> <p>17 So do you understand what she's talking</p> <p>18 about here about the messages so she can work</p> <p>19 with UVM?</p> <p>20 A I don't know exactly what she's talking about.</p> <p>21 I don't understand "three levels of message." I</p> <p>22 don't know what that means.</p> <p>23 Q In the next, paragraph, she says, "The ideal</p> <p>24 message is that the because of staffing issues</p> <p>25 we are stopping ART procedures, but that doesn't</p>	<p style="text-align: right;">92</p> <p>1 A So now we know what it means, I still don't know</p> <p>2 exactly what it means.</p> <p>3 Q You mean you don't know what the procedures are.</p> <p>4 A No, I don't know what that means for a</p> <p>5 procedures.</p> <p>6 Q But she's saying why can't we continue to do</p> <p>7 work --</p> <p>8 A Yes. If we shut down the program and we</p> <p>9 terminate all the employees, then we obviously</p> <p>10 can't do any of this work.</p> <p>11 Q By April 25, what was the discussions as you</p> <p>12 understood it that either had occurred or would</p> <p>13 occur in terms of working with University of</p> <p>14 Vermont to provide services?</p> <p>15 A So Leslie was personally handling conversations</p> <p>16 with University of Vermont to talk about the</p> <p>17 options of where we might refer our patients.</p> <p>18 So patients who were getting continual care for</p> <p>19 maybe nonpregnancy but still needed certain</p> <p>20 issues resolved or people, women who were in the</p> <p>21 cycle to provide a continuum of care once we</p> <p>22 shut down and that the University of Vermont was</p> <p>23 one of the options that we were looking at.</p> <p>24 White River was another option. We looked at an</p> <p>25 option down in the Boston area. Leslie was</p>

23 (Pages 89 to 92)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">93</p> <p>1 personally managing those conversations and</p> <p>2 having those conversations because they're quite</p> <p>3 technical.</p> <p>4 Q Was she reporting those to you?</p> <p>5 A Only at a very high level that she was doing it.</p> <p>6 Q In the second paragraph.</p> <p>7 A On page 2.</p> <p>8 Q Yes. On page 2, please. She talks about a</p> <p>9 certain process or procedure and then she said,</p> <p>10 "It also prevents Misty from pulling all those</p> <p>11 patients away." Was there a discussion about</p> <p>12 that that you're aware of?</p> <p>13 A I believe that at high level Leslie was</p> <p>14 concerned about where Misty may go if we</p> <p>15 terminate our program, in terminating employment</p> <p>16 for her where she could go that she had</p> <p>17 previously had a relationship or had an ongoing</p> <p>18 relationship with Vermont, the University of</p> <p>19 Vermont, and that she may end up there and bring</p> <p>20 patients with her.</p> <p>21 Q Did she suggest there were some things to do to</p> <p>22 try and lessen the extent to which Misty could</p> <p>23 take patients with her?</p> <p>24 A I think that she was, I mean, only if, Leslie</p> <p>25 was desperate not to shut the program down. If</p>	<p style="text-align: right;">95</p> <p>1 A Well, I'm not going to say we don't want to lose</p> <p>2 patients. We certainly want to keep patients,</p> <p>3 but what we want to do is say we've got all</p> <p>4 those patients in our program. We're</p> <p>5 discontinuing our program. It's incumbent on us</p> <p>6 to provide them a pathway to continue to get the</p> <p>7 level of care that they deserve.</p> <p>8 Q And going out into the future, if Dr. Porter has</p> <p>9 capacities that the institution doesn't have,</p> <p>10 expertise that the institution lacks, the</p> <p>11 institute shouldn't care in the least that the</p> <p>12 patients are going some other place because</p> <p>13 they're getting better care, right?</p> <p>14 A Say that again?</p> <p>15 Q Sure. If Dr. Porter can provide service, a</p> <p>16 level of expertise that the institution lacks,</p> <p>17 the institution shouldn't care in the least that</p> <p>18 patients are going to her rather than staying at</p> <p>19 Dartmouth-Hitchcock, right?</p> <p>20 MR. SCHROEDER: Objection. Calls for</p> <p>21 speculation.</p> <p>22 A I'll say that from my standpoint representing</p> <p>23 Dartmouth-Hitchcock, first and foremost, I want</p> <p>24 these women to get the care that they deserve.</p> <p>25 I don't care one way or the other who does it.</p>
<p style="text-align: right;">94</p> <p>1 we hired Dan Grow, according to this paragraph,</p> <p>2 if we hired Dan Grow and we didn't have to shut</p> <p>3 the program down, then we wouldn't be losing all</p> <p>4 those patients.</p> <p>5 Q Was it a concern of yours that if you terminated</p> <p>6 Dr. Porter she might take patients with her?</p> <p>7 A It wasn't a concern of mine. I didn't have any</p> <p>8 knowledge -- it would be a concern in general</p> <p>9 about where our patients would go, but I was far</p> <p>10 more concerned with the fact that the patients</p> <p>11 would get the care that they needed than I was</p> <p>12 about whether or not we would lose them as</p> <p>13 patients going forward.</p> <p>14 Q So I want to talk both about sort of what was</p> <p>15 going on at the time and subsequent, but would</p> <p>16 it be accurate that as far as you're concerned</p> <p>17 the principal issue for patients should be where</p> <p>18 can they get the appropriate level of care,</p> <p>19 right?</p> <p>20 A That's correct.</p> <p>21 Q Okay. And so if the appropriate level of care</p> <p>22 was Dr. Porter and she's at her other</p> <p>23 institution, that's not a concern to the</p> <p>24 institution; if we lose a bunch of patients so</p> <p>25 be it, right?</p>	<p style="text-align: right;">96</p> <p>1 I want them to go to a place that they had the</p> <p>2 level of care that they deserve, and they get to</p> <p>3 make that choice.</p> <p>4 Q And the institution should do nothing to prevent</p> <p>5 a patient or inhibit action so that the patient</p> <p>6 wouldn't be able to get services from Dr.</p> <p>7 Porter, right?</p> <p>8 A Or from anyone.</p> <p>9 Q From anyone. Right. That would be unethical,</p> <p>10 right?</p> <p>11 A We wouldn't do that.</p> <p>12 Q Wouldn't do it.</p> <p>13 (Recess taken 12:28 - 1:07 p.m.)</p> <p>14 (Exhibit 8 marked for identification)</p> <p>15 Q I'll give you what's been marked as Exhibit 8.</p> <p>16 That's a two-page document with numbers 4461 and</p> <p>17 4462. Do you recall receiving -- there are a</p> <p>18 series of emails in here, all of whom are either</p> <p>19 sent to you or you sent to others. Do you</p> <p>20 recall these? Take your time. Sorry.</p> <p>21 A Okay.</p> <p>22 Q These are a series of emails that were sent on</p> <p>23 the 26th and the 27th, correct?</p> <p>24 A Yes.</p> <p>25 Q Okay. So the first email in terms of time is on</p>

24 (Pages 93 to 96)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">97</p> <p>1 page 2, page 4462. It's from Leslie DeMars to 2 Heather Gunnell and to you, right? 3 A Yes. 4 Q So this email was sent the day after that 5 two-page whatever you want to call it kind of 6 thing. Right? And as I read what's written in 7 her email it's the message that would be sent 8 out to the department saying here's what we're 9 going to do and here's why, correct? 10 A That's the way I understand it. 11 Q Okay. And you write back and say basically you 12 agree with the message, but you want to think 13 about it overnight, correct? 14 A Correct. 15 Q Okay. Were there concerns that you heard 16 expressed about how the persons in the REI 17 department were informed about the reasons for 18 closing the defendant? 19 A About the message or about the reasons. 20 Q Yes. About the message. Hey, what are we going 21 to tell these people. 22 A Yes. I think that yes, we just wanted to make 23 sure we were all on the same page and that we 24 were giving them a message that was clear that 25 we were going to take care of our patients and</p>	<p style="text-align: right;">99</p> <p>1 would be specifics about how we were managing 2 the patients. This would not be the first 3 notice. We were not going to send this out and 4 say oh, by the way, we're closing it down and 5 here's how we're going to take care of the 6 patients. 7 Q The idea everybody would be called in 8 individually? 9 A I believe they had a team meeting where they got 10 people together. My recollection is that Leslie 11 was going to talk to the providers either 12 individually or in pairs, but I believe that she 13 ended up talking to them individually serially. 14 Q The providers, meaning the doctors? 15 A Yes. 16 Q Okay. 17 A And then the team, the rest of the team was 18 pulled together with Heather and Leslie to let 19 them know what was going on. 20 Q Was it your understanding that it would be 21 Leslie by herself? 22 A Leslie with Heather. 23 Q Leslie and Heather. 24 A Yes. 25 Q Would meet with each doctor?</p>
<p style="text-align: right;">98</p> <p>1 we needed to shut down the program. 2 Q Did you expect that for most of the people in 3 the REI Division getting an email that says 4 guess what, we're closing the division, you 5 don't have a job, would be a bit of a shock? 6 A That wasn't the plan. It was going to be face 7 to face. It was going to be meetings. 8 Q Okay. 9 A It was not going to be done by email. 10 Q So this message that Leslie DeMars has in the 11 April 26 email, who is this going to? 12 A This was a message to Heather and I with 13 basically the, I assume the talking points that 14 the decision -- so the decision to close down 15 would have already been communicated, and this 16 would be how we were going to deal with the 17 patients. The communication that we were 18 closing down REI was intended to be done face to 19 face, and I believe it was done face to face. 20 Q The subject of her email is for your review and 21 then copy and paste to the REI Division. Sounds 22 like it's going to be going to the entire 23 division. 24 A Yes, but I believe it was after we had already 25 told everybody that we are closing down and this</p>	<p style="text-align: right;">100</p> <p>1 A Leslie wanted to meet, again, my recollection is 2 that Leslie wanted to meet with each of the 3 individual providers and let them know what was 4 going on one on one to give them a chance to 5 react and give them a chance to not have to hear 6 it in a group. And then the rest of the support 7 staff would be told as a group. But they would 8 not be getting this message via email. And that 9 this would be the communication about how we 10 were managing the patients. 11 Q Did Leslie DeMars report back to you about how 12 the doctors responded to this message that we're 13 closing down the division and you're not going 14 to have a job? 15 A She likely did. I don't recall the specifics 16 around it. 17 Q Okay. 18 A She likely did. At the very least she did 19 communicate to me that she had had these 20 conversations so that we knew that the message 21 had been delivered. I would anticipate that she 22 shared some feedback about how they took it. 23 Maybe just what we expected, that they would be 24 unhappy, surprised, but I don't recall the 25 specifics of it.</p>

25 (Pages 97 to 100)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">101</p> <p>1 (Exhibit 9 marked for identification)</p> <p>2 Q I'm giving you what's been marked as Exhibit 9.</p> <p>3 It's pages 8918 and 8919. If you look at --</p> <p>4 this is an email, by the way, from Heather</p> <p>5 Gunnell to you, correct?</p> <p>6 A Well, to a bunch of people.</p> <p>7 Q Well, I thought it was -- tell me if I'm wrong.</p> <p>8 She is sending you an email that she sent to a</p> <p>9 large number of people?</p> <p>10 A Yes. That's correct.</p> <p>11 Q Yes. Got it.</p> <p>12 A Yes.</p> <p>13 Q All right. And without going down through each</p> <p>14 person, does this appear to be the entire</p> <p>15 division?</p> <p>16 A It does appear to be.</p> <p>17 (Exhibit 10 marked for identification)</p> <p>18 Q Okay. The top of this document is an email from</p> <p>19 Heather Gunnell to you, correct?</p> <p>20 A Yes.</p> <p>21 Q With a copy to Leslie DeMars?</p> <p>22 A Correct.</p> <p>23 Q And according to Heather Gunnell, apparently you</p> <p>24 and she had spoken about Dr. McBean, correct?</p> <p>25 A In passing, yes, she had mentioned it and I</p>	<p style="text-align: right;">103</p> <p>1 Q Okay.</p> <p>2 (Exhibit 11 marked for identification)</p> <p>3 MR. SCHROEDER: Are there documents that</p> <p>4 are attached to this? I feel like, looks like</p> <p>5 there's two documents that would be attached to</p> <p>6 Bates label 9567.</p> <p>7 MS. NUNAN: I can certainly ask Julia.</p> <p>8 MR. VITT: Give me two seconds and I'll ask</p> <p>9 Julia to run them.</p> <p>10 MR. SCHROEDER: I just want to make sure</p> <p>11 it's the complete document.</p> <p>12 (Mr. Vitt leaves conference room and returns)</p> <p>13 MR. VITT: She'll bring them down. I can</p> <p>14 go ahead and we can add them to them.</p> <p>15 MR. SCHROEDER: Absolutely.</p> <p>16 BY MR. VITT:</p> <p>17 Q So in her second paragraph, the one that begins</p> <p>18 "A few things." She indicates that "Dr. McBean</p> <p>19 has a longstanding friendship with MBP."</p> <p>20 Obviously Dr. Porter. "It is possible she will</p> <p>21 contact Misty to ask/tell her what is going on</p> <p>22 when we ask her if she will arrange her schedule</p> <p>23 to do the May procedures." And there's a</p> <p>24 similar comment about Dr. Lisa McGee at UVM. Do</p> <p>25 you know what she's referring to about asking</p>
<p style="text-align: right;">102</p> <p>1 asked her to forward this, I suspect. I would</p> <p>2 typically say why don't you just send me a copy</p> <p>3 of it so I can be aware of it.</p> <p>4 Q Okay. Prior to getting this email, did you know</p> <p>5 who Judy McBean was?</p> <p>6 A No.</p> <p>7 Q But I assume Heather Gunnell said basically</p> <p>8 she's a doctor who does some work here.</p> <p>9 A A per diem that does work in Brattleboro, yes.</p> <p>10 Q And according to McBean's email to David Seifer</p> <p>11 that the patients are confused and are starting</p> <p>12 to feel abandoned. Were there any discussions</p> <p>13 that you can recall about how the patients were</p> <p>14 expecting to be told about what was going on</p> <p>15 with the division?</p> <p>16 A Yes. My understanding is that the patients were</p> <p>17 going to be told by each of their individual</p> <p>18 providers. So if you had 7 patients in the</p> <p>19 cycle that you would reach out to them and share</p> <p>20 with them that the organization had elected to</p> <p>21 make a change in terms of the REI program and</p> <p>22 what that meant for you specifically.</p> <p>23 Q And how were the doctors told that that was</p> <p>24 their obligation? Was that from --</p> <p>25 A That would have been from Leslie.</p>	<p style="text-align: right;">104</p> <p>1 Dr. Porter to do the May procedures?</p> <p>2 A I don't.</p> <p>3 Q There's a reference to a care transfer plan. In</p> <p>4 the last of her comments she says "I learned</p> <p>5 today MBP has a few OR cases scheduled for late</p> <p>6 May that I will have to have a care transfer</p> <p>7 plan. These are cases the Generalists may be</p> <p>8 able to do."</p> <p>9 Do you know what that references?</p> <p>10 A I can only suspect that it refers to a couple of</p> <p>11 OR cases, planned surgeries, that Misty was</p> <p>12 going to do which we would transfer to another</p> <p>13 provider.</p> <p>14 Q So I want to make sure I've got this right.</p> <p>15 After the announcement that she was being</p> <p>16 terminated, the idea was even if she had</p> <p>17 something scheduled in the way of surgery that</p> <p>18 somebody else would be substituted for her?</p> <p>19 A That's correct.</p> <p>20 Q So was there any discussion of how the patients</p> <p>21 were to be told, you know, you thought you were</p> <p>22 going to have Dr. Porter we're going to bring in</p> <p>23 another person to do your surgery?</p> <p>24 A No specific discussions that I recall. It's</p> <p>25 not, it happens when a provider is out</p>

26 (Pages 101 to 104)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">105</p> <p>1 unexpectedly or there's a backlog of patients</p> <p>2 that we would reach out to the patient and let</p> <p>3 them know that their surgery is still scheduled</p> <p>4 but that a different provider will be doing it.</p> <p>5 Q Who -- go ahead. I'm sorry.</p> <p>6 A We would also offer the patient an option if</p> <p>7 they choose not to have the surgery of course.</p> <p>8 Q And who would be making the decision about who</p> <p>9 would be an appropriate person to do that</p> <p>10 surgery?</p> <p>11 A That would be under the leadership of Leslie.</p> <p>12 Q As of May 1, Leslie DeMars is still the Chair?</p> <p>13 A Yes.</p> <p>14 Q We're going to mark as Exhibit 12 a two-page</p> <p>15 document, pages 26715 and 26716. The top email</p> <p>16 is from Aimee Giglio to Ed Merrens.</p> <p>17 (Exhibit 12 marked for identification)</p> <p>18 Q Okay. Going to the May 1 email from Aimee</p> <p>19 Giglio at the bottom of the page, you see that?</p> <p>20 A Yes.</p> <p>21 Q Apparently this was sent at 10:05 p.m., correct?</p> <p>22 A Correct.</p> <p>23 Q You often receive emails this late at night from</p> <p>24 people at the hospital?</p> <p>25 A I didn't receive this email.</p>	<p style="text-align: right;">107</p> <p>1 A Yes.</p> <p>2 Q Have you seen this before today?</p> <p>3 A I have not.</p> <p>4 Q Okay. And he says, "I'm meeting with Rich and</p> <p>5 Duane." Would that be Rich Rothstein and Duane</p> <p>6 Compton?</p> <p>7 A I believe Duane Compton. I don't know why Rich</p> <p>8 Rothstein -- well, yes. I guess it would be</p> <p>9 Rich Rothstein and Duane Compton. Yes.</p> <p>10 Q That would be in connection with Leslie DeMars</p> <p>11 being replaced, right?</p> <p>12 MR. SCHROEDER: Objection. Calls for</p> <p>13 speculation.</p> <p>14 A I can't confirm.</p> <p>15 Q And he goes on to say in the next paragraph,</p> <p>16 "While on the surface we are pinning the</p> <p>17 dissolution of our reproductive endocrinology</p> <p>18 program on our failure to maintain and recruit</p> <p>19 nurses for this work, it is ultimately the</p> <p>20 dysfunction of the physicians who worked in this</p> <p>21 area for years (as well as recent hires) and</p> <p>22 ultimately a failure of leadership, for which I</p> <p>23 hold Leslie fully accountable."</p> <p>24 Do you agree with that?</p> <p>25 A I don't disagree with it.</p>
<p style="text-align: right;">106</p> <p>1 Q Oh, I'm sorry. Right. Didn't go to you. Went</p> <p>2 to Merrens, Troland and John Kacavas, right?</p> <p>3 A Yes.</p> <p>4 Q She says "Thank you, Ed. We spent extensive</p> <p>5 time with her and Daniel --," that would be you,</p> <p>6 right?</p> <p>7 A I would suspect it is, yes.</p> <p>8 Q Right. " -- this evening. I'd like to talk</p> <p>9 with you about her leadership and next steps.</p> <p>10 Do you recall that meeting?</p> <p>11 A I don't.</p> <p>12 Q Were any things going on around this time that</p> <p>13 you can recall involving Leslie DeMars and you</p> <p>14 and --</p> <p>15 A I think there was questions about, you know, now</p> <p>16 that we've made the announcement and the public</p> <p>17 comment was measurable, there was some question</p> <p>18 as to how Leslie had been running, how we kind</p> <p>19 of got into this situation. I believe that</p> <p>20 there was a meeting with Aimee, myself, and</p> <p>21 Leslie although I don't recall any of the</p> <p>22 details. I suspect that we had a meeting to</p> <p>23 talk a little bit about how we got here.</p> <p>24 Q Then Merrens writes an email to Aimee with</p> <p>25 copies to Kacavas and Kim Troland, right?</p>	<p style="text-align: right;">108</p> <p>1 Q Well, do you agree with it?</p> <p>2 A I agree that the ultimate ownership and</p> <p>3 accountability for the failure of the REI</p> <p>4 program as it relates to the dysfunction, yes,</p> <p>5 is attributable to the leadership and in this</p> <p>6 case the Chair being Leslie DeMars.</p> <p>7 Q When he says "we are pinning the dissolution of</p> <p>8 our reproductive endocrine program on our</p> <p>9 failure to maintain and recruit nurses," what</p> <p>10 he's saying is essentially that's what we're</p> <p>11 telling the public, right?</p> <p>12 MR. SCHROEDER: Objection. Calls for</p> <p>13 speculation. You can answer.</p> <p>14 A It appears that way, yes.</p> <p>15 Q And in fact, that was the message that</p> <p>16 Dartmouth-Hitchcock delivered, that the reason</p> <p>17 for closing the REI Division was the problems</p> <p>18 recruiting and keeping the nursing staff?</p> <p>19 A Which is true. Yes.</p> <p>20 Q I understand it's true, but it's not the reason</p> <p>21 you closed the division, is it?</p> <p>22 A The reason we closed the division is because it</p> <p>23 was dysfunctional.</p> <p>24 Q Right.</p> <p>25 A You can see my documents as to why I recommended</p>

27 (Pages 105 to 108)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">109</p> <p>1 it. It was dysfunctional.</p> <p>2 Q He goes on to report, this is Ed Merrens now,</p> <p>3 "The fact that failures of such programs due to</p> <p>4 nursing shortages are not common and we'll be</p> <p>5 referring patients to a similar, rural academic</p> <p>6 REI center in Burlington, Vermont, will make our</p> <p>7 explanation to the public, patients and the</p> <p>8 media, well, rather thin." Agree with that?</p> <p>9 A Not necessarily.</p> <p>10 (Exhibit 13 marked for identification)</p> <p>11 MR. SCHROEDER: Take your time to review</p> <p>12 the whole document.</p> <p>13 Q All set?</p> <p>14 A I'm all set.</p> <p>15 Q Okay. Have you seen what we've marked as</p> <p>16 Exhibit 13 prior to today?</p> <p>17 A Since my name is on it, I would say yes.</p> <p>18 Q All right. Do you recall receiving this email?</p> <p>19 A I don't recall specifically receiving this</p> <p>20 email.</p> <p>21 Q Okay. Beginning email in this chain starts with</p> <p>22 Ed Merrens, right?</p> <p>23 A Yes.</p> <p>24 Q And he says, "I am getting inundated with</p> <p>25 heartfelt and long emails wondering why Misty</p>	<p style="text-align: right;">111</p> <p>1 Q Three of you.</p> <p>2 A Yes.</p> <p>3 Q So there was at least one meeting where you're</p> <p>4 saying to Ed Merrens we think we should let all</p> <p>5 three go, and then after the termination there's</p> <p>6 another meeting in which Ed Merrens says,</p> <p>7 essentially, lot of people are saying what's</p> <p>8 going on, why are you firing Misty Porter, and</p> <p>9 you said the right decision.</p> <p>10 A I said we shut down the program, and yes, I</p> <p>11 supported our initial plan of action.</p> <p>12 Q Well, shutting down the program and terminating</p> <p>13 Misty Porter --</p> <p>14 A As part of that. Yes. So my position remains</p> <p>15 that when we shut the program down, we would let</p> <p>16 all of the providers go because we didn't have a</p> <p>17 program.</p> <p>18 Q And despite the fact that she could do other</p> <p>19 work, ultrasounds, complex surgeries, et cetera,</p> <p>20 decision was well, you're part of the REI</p> <p>21 program, you have to go.</p> <p>22 A You're primarily part of the REI program. The</p> <p>23 primary part of your work is gone, yes.</p> <p>24 Q And in response to that question, Ed Merrens</p> <p>25 says hey, is this the right decision, he gets a</p>
<p style="text-align: right;">110</p> <p>1 can't stay on to do her ultrasound complex</p> <p>2 operative and teaching role even if we end REI.</p> <p>3 I suspect that you considered this in the</p> <p>4 evaluation the program and your knowledge of</p> <p>5 Misty. I just need to know how better to answer</p> <p>6 this question."</p> <p>7 Did Ed Merrens outside this email raise</p> <p>8 essentially that question with you?</p> <p>9 A I don't recall -- I will say that whether Leslie</p> <p>10 was in the room or not, I do recall having</p> <p>11 conversations with Ed about whether or not this</p> <p>12 had been the right decision to let all three of</p> <p>13 the providers go, and I did say that it was my</p> <p>14 opinion that it was the right decision to make.</p> <p>15 Q One meeting or more than one?</p> <p>16 A One or two. I don't know. It wasn't a frequent</p> <p>17 conversation. I know we had one conversation</p> <p>18 with Leslie and me and Ed about whether or not</p> <p>19 we should cut all three including Misty, and</p> <p>20 then I know we had a meeting after the fact</p> <p>21 where I did reiterate that I think we made the</p> <p>22 right decision.</p> <p>23 Q When you say "we" on the second meeting, you</p> <p>24 said just you and Ed?</p> <p>25 A No. It would have been with the three of us.</p>	<p style="text-align: right;">112</p> <p>1 page and a half email from --</p> <p>2 A Leslie.</p> <p>3 Q -- Leslie. Right. Do you recall receiving a</p> <p>4 copy of that email at the time?</p> <p>5 A I'm sure that I got it, and I'm sure that I read</p> <p>6 it through. I'm not sure that it called for any</p> <p>7 action on my part. I believe I made a point to</p> <p>8 Ed Merrens that following this one-on-one either</p> <p>9 in person or over email that we should hold the</p> <p>10 course and keep moving.</p> <p>11 Q Okay. So in her first paragraph, she reports</p> <p>12 that the attitude towards Albert and David is</p> <p>13 more to, quote, don't let the door hit you on</p> <p>14 the way out, close quote.</p> <p>15 Did Leslie DeMars at some point in this</p> <p>16 process say to you essentially two of these</p> <p>17 providers, two of these doctors are not popular,</p> <p>18 not well thought of, not highly regarded among</p> <p>19 the staff, anything like that?</p> <p>20 A I don't recall any specific conversations</p> <p>21 regarding that. Again, I focused my work on the</p> <p>22 program itself. She may have said something to</p> <p>23 that effect. I wasn't overly concerned with</p> <p>24 whether or not they were liked by the staff.</p> <p>25 The question really from my, as I said, I'm a</p>

28 (Pages 109 to 112)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">113</p> <p>1 bit of a mercenary. The question was is the 2 program functioning. No, it's not. It's not 3 functioning. 4 Q So you mentioned an earlier meeting with 5 yourself, Ed Merrens and DeMars before the 6 decision was announced to terminate all the 7 providers, right? 8 A Yes. 9 Q Okay. How long did that meeting last? 10 A Oh, I don't recall, I just, I just know that we 11 talked about the plan which said that we would 12 exit all of the staff. 13 Q Exit all the staff. You mean terminate their 14 employment? 15 A Yes. 16 Q Okay. And in that discussion did Dr. DeMars 17 weigh in on whether all of the staff should be 18 treated the same, that they should all be 19 terminated? 20 A I don't recall whether she did or not. 21 Q Did Merrens ask a series of questions about 22 what's the work that they do, how good do they 23 do the work, how many patients are going to be 24 upset if they're terminated, you know, a series 25 of questions to sort of probe whether this is a</p>	<p style="text-align: right;">115</p> <p>1 we didn't fire anybody. 2 Q How many doctors are employed at 3 Dartmouth-Hitchcock? 4 A I'm guessing 5 or 600. And I may be off. But 5 order of magnitude, it's in the hundreds. 6 Q That's all I need to know. Are talented doctors 7 hard to find or are they a dime a dozen? 8 A Well, we know they're difficult to find. We 9 also know that they're very specialized. That's 10 why they're so difficult to get. They're very 11 specialized. 12 Q Okay. And if a doctor can do two or three or 13 four things well, really well, does that set 14 them apart a little bit saying I can do surgery 15 but I can also read ultrasounds, and I can do 16 "X", and I do them all at a very high level. 17 Does that make them unusual? 18 A I don't think unusual. I think that well, 19 they're not a unicorn, but they're not 20 everywhere. That's true. 21 Q Okay. 22 A But we also match capacity with demand. 23 Q Got it. And were you in a position by yourself 24 to evaluate whether Misty Porter's skills would 25 be useful in the Obstetrics and Gynecology</p>
<p style="text-align: right;">114</p> <p>1 good decision? 2 A I don't recall that we went into all of those 3 questions that you asked. We had provided 4 documentation with a list of all of the patients 5 that were going to be affected so that was 6 already on the table. We had already provided 7 them with a plan as to how we would or where 8 they would go for treatment. So, you know, I 9 don't recall the actual back and forth within 10 the conversations other than that that was part 11 of the content. 12 Q I was asking more, and maybe I wasn't clear in 13 my question, probably wasn't, about whether he 14 was asking questions about the talents or the 15 capacity of the doctors. When you're going to 16 fire three doctors that doesn't happen very 17 often, right? 18 A Right. 19 Q Pretty unusual to tell three -- 20 A So in my mind, we didn't fire doctors. We let 21 them go because we didn't have a need for their 22 work. We shut the business down. Shut that 23 piece of the business down. And the staff that 24 were associated with that were redundant to the 25 operation, and therefore, they were let go. So</p>	<p style="text-align: right;">116</p> <p>1 Department? 2 A No. 3 Q Who would you have to rely upon? 4 A Leslie DeMars. 5 Q In her email, Dr. DeMars says, "Everyone also is 6 remembering Misty as a full-time employee 7 wearing three hats, and not the one who has been 8 out for almost 18 months. What she has done in 9 these 18 months is help several members of the 10 department have babies (no HIPAA violations 11 here)." 12 Do you know what she's referring to about 13 people having babies? 14 A I did not know that Misty was out on disability. 15 I have no idea what she's talking about here. 16 Q In the second paragraph of her email, she asks, 17 "What's the talking point? My suggestion is, 18 quote, we are working with each physician on 19 their employment options as well as what is best 20 for DH and DH Ob/Gyn. I don't know how you say, 21 quote, I understand you're angry but this 22 decision was made in the best interests of the 23 division and Misty. Even if that's the truth, 24 no one will buy that at the moment." 25 Was there a discussion of having a talking</p>

29 (Pages 113 to 116)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">117</p> <p>1 point the way she describes it in a second, I</p> <p>2 know you're angry, but we made the best decision</p> <p>3 for the division and for Misty?</p> <p>4 A I'm not aware of any conversations, and I don't</p> <p>5 believe I was ever part of a conversation about</p> <p>6 a talking point related to that.</p> <p>7 Q On the second page, about halfway down, she</p> <p>8 says, "Misty's medical disability has been</p> <p>9 devastating, and I'm not sure that she should or</p> <p>10 will really ever be able to do the complex</p> <p>11 hysteroscopy or laparoscopy that she once did.</p> <p>12 That being said, there are a few full spectrum</p> <p>13 REI docs that could bring similar surgical</p> <p>14 skills, but they are hard to find. I think that</p> <p>15 the best outcome of this termination is the</p> <p>16 chance for Misty to actually be out on leave</p> <p>17 with no intervening responsibilities, so that</p> <p>18 she can assess how much improvement she might</p> <p>19 gain."</p> <p>20 So I understand you said look, I didn't</p> <p>21 know she was on disability, right?</p> <p>22 A Right.</p> <p>23 Q Are you aware of any efforts that were made by</p> <p>24 Leslie DeMars or anyone else to get a handle on</p> <p>25 whether or not she would ultimately be able to</p>	<p style="text-align: right;">119</p> <p>1 Misty as being a disruptive behavior, disruptive</p> <p>2 influence on the team at times and that she</p> <p>3 leveraged her friendship with, previous</p> <p>4 friendship with Leslie to try to influence how</p> <p>5 things happened.</p> <p>6 Q Is this one conversation or more than one?</p> <p>7 A Probably a couple but not specific to this, but</p> <p>8 probably a couple.</p> <p>9 Q And the person who's making these comments was</p> <p>10 Leslie, right?</p> <p>11 A It's all Leslie.</p> <p>12 Q All Leslie. Okay. And she said Misty Porter is</p> <p>13 a disruptive influence at times.</p> <p>14 A Yes.</p> <p>15 Q What does that mean?</p> <p>16 A That means that, well, based on what, I guess</p> <p>17 you'd have to ask Leslie.</p> <p>18 Q Did anybody ask her what does that mean?</p> <p>19 A Leslie just explained that she tries to use her</p> <p>20 previous friendship to influence behaviors of</p> <p>21 Leslie and of the team and that she is</p> <p>22 disruptive at times.</p> <p>23 Q There's a lot of behavior that might fall within</p> <p>24 the term "disruptive," right?</p> <p>25 A Yeah, there is.</p>
<p style="text-align: right;">118</p> <p>1 come back at the same level of skill and stamina</p> <p>2 that she had before?</p> <p>3 A I'm not aware. I'm not even aware what her</p> <p>4 disability is.</p> <p>5 Q At the top of the email, at the top of this</p> <p>6 page, second page, Leslie DeMars writes, "The</p> <p>7 most desirable outcome for the department would</p> <p>8 be if Misty could continue to do ultrasound and</p> <p>9 be a worker bee in a new REI Division. Daniel,</p> <p>10 Heather and I thought about the consequences of</p> <p>11 trying to do that knowing Misty's past behavior</p> <p>12 and her inability to be just a worker bee."</p> <p>13 Were you involved in any such discussions?</p> <p>14 A The conversation that reflects the conversations</p> <p>15 that Heather, Leslie and I had where Leslie</p> <p>16 continued to explain the challenges of working</p> <p>17 with Misty and that Misty was a disruptive</p> <p>18 behavior.</p> <p>19 Q I don't think you mentioned that before.</p> <p>20 A Okay.</p> <p>21 Q So tell me about that conversation.</p> <p>22 A So we've had, as we were, I know that I at times</p> <p>23 as we were talking about putting this program</p> <p>24 together, closing down the program and looking</p> <p>25 forward to go forward, where Leslie described</p>	<p style="text-align: right;">120</p> <p>1 Q Pretty wide range.</p> <p>2 A Yes.</p> <p>3 Q You can in the office and throw things and yell.</p> <p>4 That would be disruptive, right?</p> <p>5 A That would be disruptive, yes.</p> <p>6 Q Or you could have really demanding standards and</p> <p>7 insist that people meet those. Some people</p> <p>8 might say that's disruptive, right?</p> <p>9 A Some people might.</p> <p>10 Q And there's something sort of the middle. You</p> <p>11 could say, you know, she doesn't show up on time</p> <p>12 or she misses appointments or patients don't</p> <p>13 like her. So saying somebody's disruptive</p> <p>14 doesn't tell you a whole lot about whether</p> <p>15 they're a good employee, does it?</p> <p>16 A No, it doesn't.</p> <p>17 Q Okay. So did anyone in the conversations you're</p> <p>18 talking about get down to a little granular</p> <p>19 level saying look, here's what she does that</p> <p>20 really makes it difficult?</p> <p>21 A I don't recall any conversations about that and</p> <p>22 I didn't write this. This is Leslie's</p> <p>23 recollection of our conversation.</p> <p>24 Q Right. In general did you find Leslie DeMars to</p> <p>25 be an accurate reporter of what people said?</p>

30 (Pages 117 to 120)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">121</p> <p>1 A Not always. 2 (Exhibit 14 marked for identification) 3 Q I show you what's been marked Exhibit 14. 4 Have you read it? 5 A I've read it. 6 Q So you begin, this is a email that you wrote to 7 Ed Merrens, right? 8 A Yes. 9 Q And "Ed, I am not including Leslie in this 10 response," close quote. Why? 11 A I elected not to include her. 12 Q I bed your pardon? 13 A I elected not to include her. 14 Q There have been a fair number of emails which 15 we've identified and much more that I could pull 16 out where you, Leslie DeMars, Heather Gunnell 17 are going back and forth on a ton of issues. 18 This is the first one I've seen that doesn't 19 include her. So what happened? 20 A I was trying to -- I just decided that this 21 would not be helpful for me to share with 22 Leslie. 23 Q In what respect? 24 A It would not help our personal relationship in 25 terms of going forward.</p>	<p style="text-align: right;">123</p> <p>1 A That another Chair would be more effective than 2 her. 3 Q Okay. In the next sentence you say, "Based on 4 my observations and interactions, Misty has been 5 the biggest driver to the dysfunction within 6 REL." What observations are you referring to? 7 A So all of this would have been based on 8 observations in her interactions with Leslie and 9 Heather about what was going on in terms of 10 conversations, and in terms of how this 11 program -- observations may not have been an 12 appropriate word, but it was my interactions and 13 discussions with Leslie and Heather related to 14 the fact that Misty was the biggest issue. 15 Leslie continued to say that a number of times. 16 Q Okay. So am I correct based upon what you just 17 said in concluding that you had no observations 18 of Misty Porter's behavior? 19 A Yes. That's correct. 20 Q Okay. 21 A I have no observations of Misty herself related 22 to this, any negative or positive. 23 Q Have you met her? 24 A Yeah, I've met her a few times, but I've never 25 really interacted with her other than socially,</p>
<p style="text-align: right;">122</p> <p>1 Q Did you expect there was going to be a personal 2 relationship going forward? 3 A She was the Chair and I was her administrative 4 partner. As long as she was the Chair, there 5 would be that relationship. 6 Q Were you aware of discussions as of May 12 about 7 the possibility of her stepping down voluntarily 8 or involuntarily as the Chair? 9 A So I don't know exact date. Likely I was aware 10 that the conversations were going on, but I also 11 had been aware that no decision had been made. 12 Q And who was involved in those discussions? 13 A That would have been Ed Merrens and Maria Padine 14 and whoever else they would talk to. Perhaps 15 Aimee Giglio. 16 Q Had anyone asked your opinion, not in writing 17 but some shape, matter or form, essentially, 18 Daniel, should we keep her, should she step down 19 as Chair, anything like that? 20 A Something like that, sure. 21 Q And how did you weigh in? 22 A That we could probably, that another Chair would 23 probably be more effective. 24 Q So as of this date, you'd already weighed in 25 saying we ought to get her to step down, right?</p>	<p style="text-align: right;">124</p> <p>1 you know, hi, how are you said in a meeting. 2 Never been in an operating room with her, never 3 been with a patient with her. 4 Q Okay. So in terms of how she deals with 5 patients, her talents as the ultrasound or in 6 the OR, you have no information that you can 7 provide about any of those today? 8 A That's correct. So this is intended to be more 9 about my interactions. Observations is again 10 inarticulate. My observations or my 11 interactions with Leslie and the feedback that I 12 get from Leslie and from Heather. 13 Q So tell me what Heather Gunnell said about Misty 14 being a driver of dysfunction. 15 A I think, I can't quote her specifically. I 16 would say she confirmed with Leslie and maybe 17 gave examples that I can't rely on from a 18 specific standpoint regarding the fact that 19 Misty is able to manipulate Leslie. So as an 20 example, again, I don't have specifics, but 21 Leslie and I or Leslie and Heather and I or 22 Leslie and Heather may have a conversation and 23 Leslie will agree on a plan of action. Once 24 that conversation between Leslie and Misty 25 happens, Leslie will come back and have a</p>

31 (Pages 121 to 124)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">125</p> <p>1 different strategy because Misty has been able</p> <p>2 to influence her, particularly when we were</p> <p>3 talking about trying to change the way we run</p> <p>4 the clinics.</p> <p>5 As I mentioned earlier this morning, each</p> <p>6 of the physicians had their own nurse and their</p> <p>7 own way of doing things, and we agreed that</p> <p>8 working with the Value Institute that we were</p> <p>9 going to try to get some standard work. Get</p> <p>10 everybody to do that. Leslie was on board with</p> <p>11 that. Leslie had conversations with Misty and</p> <p>12 the other providers about that and then came</p> <p>13 back and wasn't sure anymore that we should do</p> <p>14 that. So she was influenced by Misty.</p> <p>15 Q How do you know that each time there was a</p> <p>16 conversation Leslie came back with a different</p> <p>17 view or different take that it was Misty?</p> <p>18 A I don't know. Only because Leslie had told</p> <p>19 either Heather or I that that was the case.</p> <p>20 Q Did you have concerns that Leslie DeMars might</p> <p>21 not be a particularly accurate reporter?</p> <p>22 A Yes. I answered that question a minute ago and</p> <p>23 said yes.</p> <p>24 Q So if she says Misty said X, Y or Z she might be</p> <p>25 using that has an excuse, right?</p>	<p style="text-align: right;">127</p> <p>1 to you about Dr. Porter, and I want to make sure</p> <p>2 that I've got a complete list of whatever was</p> <p>3 said to you about her. So any other comments</p> <p>4 you can recall by either Heather Gunnell or</p> <p>5 Leslie DeMars other than the ones you've already</p> <p>6 mentioned?</p> <p>7 A No. I mean, I would also point out what it says</p> <p>8 in the email here. That there's no question of</p> <p>9 her competence. It was about her behavior.</p> <p>10 Q Was anything said about keeping Beth Todd?</p> <p>11 A I'm sure there was. I don't recall any</p> <p>12 conversation regarding that.</p> <p>13 Q Other than the information you provided in the</p> <p>14 past ten, 15 minutes, about conversations</p> <p>15 regarding Misty Porter, are there any other</p> <p>16 observations or interactions to which you refer</p> <p>17 in the email about Misty Porter that you can</p> <p>18 recall?</p> <p>19 A No. The only conversations that I believe I</p> <p>20 had, primarily conversations, would be with</p> <p>21 Leslie and Heather, and Leslie's, Leslie</p> <p>22 struggled with, I think I mentioned earlier.</p> <p>23 They used to be peers and then Leslie became the</p> <p>24 Chair and they were friends outside of work and</p> <p>25 that Leslie mentioned on more than one occasion</p>
<p style="text-align: right;">126</p> <p>1 A It's possible.</p> <p>2 Q And in considering Misty's actions in the</p> <p>3 clinic, did anyone express the view that having</p> <p>4 to work with people who are incompetent might</p> <p>5 make you a little short-tempered?</p> <p>6 A I've never heard that. Related from Misty?</p> <p>7 Q That is working with doctors who are incompetent</p> <p>8 and do not know how to perform their services in</p> <p>9 a workmanlike way might make you a little</p> <p>10 short-tempered?</p> <p>11 A I don't recall that. I wouldn't disagree with</p> <p>12 it, but I don't recall it.</p> <p>13 Q So in fact, if you have to work with somebody</p> <p>14 who doesn't know how to do their job and you</p> <p>15 constantly have to correct them and work with</p> <p>16 them, it could make you a little short-tempered,</p> <p>17 right?</p> <p>18 A Of course it would.</p> <p>19 Q Take a quick break?</p> <p>20 (Recess taken 2:05 - 2:21 p.m.)</p> <p>21 BY MR. VITT:</p> <p>22 Q When we broke we were talking about Exhibit 14,</p> <p>23 email to Ed Merrens, right?</p> <p>24 A Yes.</p> <p>25 Q You mentioned some comments that have been made</p>	<p style="text-align: right;">128</p> <p>1 that she felt Misty did everything she could to</p> <p>2 manipulate her and manipulate their relationship</p> <p>3 to get whatever it was that she wanted.</p> <p>4 Q Did Leslie talk about, at least to you, that</p> <p>5 you're aware of, why she was unable to</p> <p>6 apparently avoid or stand up to Misty when this</p> <p>7 attempted manipulation took place?</p> <p>8 A She was conflicted because of her friendship and</p> <p>9 her ability to be both a friend and a leader.</p> <p>10 She wanted to be both. She was conflicted.</p> <p>11 Q But other than what you've told me today, there</p> <p>12 are no other observations or reactions that you</p> <p>13 can recall?</p> <p>14 A I can't recall any.</p> <p>15 Q Okay.</p> <p>16 (Exhibit 15 marked for identification)</p> <p>17 Q I'll show you what has been marked as 15. Have</p> <p>18 you had a chance to look at it? I'm sorry.</p> <p>19 A Okay.</p> <p>20 Q Okay. There is no author identified on this</p> <p>21 document, but I believe it was prepared by</p> <p>22 Heather Gunnell.</p> <p>23 A I have no way of knowing.</p> <p>24 Q And at the bottom of the page there's the</p> <p>25 heading "Comments from LRD," colon, and then a</p>

32 (Pages 125 to 128)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">129</p> <p>1 series of comments, right?</p> <p>2 A Yes.</p> <p>3 Q There's a reference to a "Division Director</p> <p>4 meeting 5/18/17: explained REI closing largely</p> <p>5 due to dysfunction."</p> <p>6 Do you know what Division Director meeting</p> <p>7 is being referenced there?</p> <p>8 A I do not.</p> <p>9 Q Okay. And the next bullet is "Working on a way</p> <p>10 to keep MBP." Below that, "Senior leadership</p> <p>11 has no appetite to support women's health,"</p> <p>12 colon, and after that, "Senior leadership did</p> <p>13 not consider the implications of REI shutdown to</p> <p>14 the department." And then below that, the</p> <p>15 bullet, "Now that the media backlash is what it</p> <p>16 is, we are in a position to get what we need."</p> <p>17 And then I'll come back to the end of it in a</p> <p>18 moment.</p> <p>19 Do you recall being informed in substance</p> <p>20 that Leslie DeMars had been making some or all</p> <p>21 the comments that are referenced here?</p> <p>22 A So let me answer your other question first. Now</p> <p>23 that I look at this, so the Division Director</p> <p>24 meeting would have been division for the OB/GYN</p> <p>25 only. So it would have been Heather, Leslie and</p>	<p style="text-align: right;">131</p> <p>1 Q Who's "Steve L." ?</p> <p>2 A I would have to say it's likely Steve LeBlanc.</p> <p>3 (Discussion off the record)</p> <p>4 Q Exhibit 16, three-page document 9476, 9478.</p> <p>5 (Exhibit 16 marked for identification)</p> <p>6 MR. SCHROEDER: Are we putting in the other</p> <p>7 document separately?</p> <p>8 MR. VITT: Yes. It's on its way.</p> <p>9 MS. NUNAN: I apologize.</p> <p>10 MR. SCHROEDER: That's okay.</p> <p>11 BY MR. VITT:</p> <p>12 Q Have you had a chance to look at this?</p> <p>13 A Yes.</p> <p>14 Q And the email that goes on for two and a half</p> <p>15 pages is from Leslie DeMars to Kris Strohbehn,</p> <p>16 Emily Baker, Miriam Cordell, Regan Thieler,</p> <p>17 Heather Gunnell and Tim Fisher with a copy to</p> <p>18 herself. Who are the individuals, if you know,</p> <p>19 who received a copy of this?</p> <p>20 A Kris Strohbehn, I believe, is the Chair of share</p> <p>21 of UroGyn as part of the -- Emily Baker is the</p> <p>22 Chair or not Chair. I'm sorry. Let me start</p> <p>23 again.</p> <p>24 Kris Strohbehn is the Section Chief for</p> <p>25 UroGyn. Emily Baker, I believe, is the Section</p>
<p style="text-align: right;">130</p> <p>1 the OB/GYN team, whoever would comprise that.</p> <p>2 And so this was not a Director's meeting at</p> <p>3 large. This was an open GYN meeting, and that's</p> <p>4 my interpretation to the best of my ability.</p> <p>5 Some but not all of these comments fit with</p> <p>6 comments that I heard about Leslie in terms of</p> <p>7 her explanations to what was going on. Yes.</p> <p>8 Q Which one doesn't fit? Or which ones?</p> <p>9 A So I did know that she was continually looking</p> <p>10 at ways to keep Dr. Porter on, and I did know</p> <p>11 that she had said at times that she was</p> <p>12 questioning whether or not senior leadership</p> <p>13 fully supported the women's health program.</p> <p>14 Q That must have annoyed people.</p> <p>15 MR. SCHROEDER: Objection. Calls for</p> <p>16 speculation.</p> <p>17 Q Your people say something towards the effect of</p> <p>18 what are you talking about, of course we support</p> <p>19 women's health?</p> <p>20 A Well, at the senior leadership level, they would</p> <p>21 all say that, yes. I would say it as well.</p> <p>22 Q Okay. And then the bottom bullet is, "When</p> <p>23 asked who specifically: Ed, Dan J., Steve L.</p> <p>24 So "Dan J." is Dan Jansen?</p> <p>25 A Yes.</p>	<p style="text-align: right;">132</p> <p>1 Chief for the birthing pavilion. Miriam</p> <p>2 Cordell, not sure exactly. Regan Thieler who I</p> <p>3 think was left was the section chief for one of</p> <p>4 the other sections.</p> <p>5 Q She's at Mayo now.</p> <p>6 A Okay. Heather is the Director, and Tim Fisher,</p> <p>7 I believe, is in charge of education, training</p> <p>8 and things like that. So this would be the</p> <p>9 leadership team that reports to Leslie being the</p> <p>10 section chiefs and the Director, of course.</p> <p>11 Q Okay. And the subject is "unanticipated</p> <p>12 downstream effects." Does it appear to be her</p> <p>13 take on the downstream effects of closing REI</p> <p>14 Division?</p> <p>15 A Harms that result from closing REI. So yes, I</p> <p>16 would expect that -- that's my interpretation.</p> <p>17 Q Okay.</p> <p>18 A This is the first time I've seen this.</p> <p>19 Q So she goes through the Financial, Educational,</p> <p>20 Academic, Clinical care, Personal/faculty,</p> <p>21 IVF/ART services, Patients. Those are the</p> <p>22 categories, right?</p> <p>23 A Yes.</p> <p>24 Q When there were discussions about whether or not</p> <p>25 to close the REI Division, did Dr. DeMars</p>

33 (Pages 129 to 132)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">133</p> <p>1 present to you anything close to or similar to</p> <p>2 what's reflected in this email?</p> <p>3 A I don't recall seeing anything like this.</p> <p>4 Q I don't do this kind of work, but it seems like</p> <p>5 a lot of effort went into preparing this. Does</p> <p>6 it seem that way to you?</p> <p>7 A Yes.</p> <p>8 Q Do you know any reason this couldn't have been</p> <p>9 provided before the decision was made?</p> <p>10 A I'm not sure of the validity of all of the data.</p> <p>11 Much of the data, not counting the financials,</p> <p>12 much of the data is assessments based on</p> <p>13 operations within a group. I will say that we</p> <p>14 did have the financials for the REI Division.</p> <p>15 We knew what the profit was for one division,</p> <p>16 what the loss was in another so we did have a</p> <p>17 very good understanding of what the loss would</p> <p>18 be. It was minimal.</p> <p>19 Q Loss if you closed, you mean?</p> <p>20 A The net loss. So the program was marginally</p> <p>21 profitable, I think \$77,000 or ballpark. 177,</p> <p>22 something like that. For a program that size</p> <p>23 that doesn't include any overhead allocation, so</p> <p>24 on. So when we took the decision to shut it</p> <p>25 down, we had a very good idea of what the</p>	<p style="text-align: right;">135</p> <p>1 (Exhibit 15 remarked for identification)</p> <p>2 Q We're going to mark as Exhibit 17 a one-page</p> <p>3 document, 13227. Two emails from Ed Merrens and</p> <p>4 then an email response from Maria Padine.</p> <p>5 (Exhibit 17 marked for identification)</p> <p>6 Q Seen this before?</p> <p>7 A Yes.</p> <p>8 Q So the bottom message, the first one is from Ed</p> <p>9 Merrens to Leslie DeMars with a copy to you.</p> <p>10 A Yes.</p> <p>11 Q Subject, "Revised draft message - look ok"?</p> <p>12 This is a message that would be sent basically</p> <p>13 to the community at large?</p> <p>14 A Yes.</p> <p>15 Q And says "Dr. DeMars has indicated her desire to</p> <p>16 step down from her Service Line and Department</p> <p>17 Chair role in OB/GYN this summer."</p> <p>18 Had you been involved in discussions prior</p> <p>19 to June 22 about Dr. DeMars stepping down as a</p> <p>20 Service Line and Department Chair?</p> <p>21 A I was aware of it, but I don't believe that I</p> <p>22 had any input other than I would have no problem</p> <p>23 with this. I concur that this would make sense.</p> <p>24 Q Would it be accurate based on what you've said</p> <p>25 earlier for me to conclude that it was Ed</p>
<p style="text-align: right;">134</p> <p>1 financial impact would be. So this financial</p> <p>2 data is certainly perhaps worthwhile but would</p> <p>3 not have affected our decision. We had, we did</p> <p>4 do a due diligence from a financial perspective</p> <p>5 before we made the decision to close.</p> <p>6 Q But it's the other materials, Educational,</p> <p>7 Academic, Clinical care, Personal/faculty,</p> <p>8 IVF/ART and Patients, that is kind of what you</p> <p>9 call operational.</p> <p>10 A So we did have some conversations related to the</p> <p>11 educational component as we mentioned very early</p> <p>12 this morning about its impact on residents and</p> <p>13 fellows, whomever would be from an academic and</p> <p>14 an education standpoint.</p> <p>15 The clinical care, you know, again is part</p> <p>16 and parcel to the work that was within that so,</p> <p>17 again, we talked about that earlier today. The</p> <p>18 work that it constitutes, what is an IVF, REI</p> <p>19 program.</p> <p>20 (Discussion off the record)</p> <p>21 MR. VITT: We're going to mark as a new</p> <p>22 Exhibit 15 pages 15547 and 15548. Earlier we</p> <p>23 had marked only 15548, not 15547, and that page</p> <p>24 reflects that there was a 6/6/2017 email from</p> <p>25 Heather Gunnell to Daniel Herrick.</p>	<p style="text-align: right;">136</p> <p>1 Merrens and Maria Padin who made this decision?</p> <p>2 A Yes.</p> <p>3 Q Was there a particular meeting that you're aware</p> <p>4 of where the decision was made to have -- let me</p> <p>5 back up.</p> <p>6 Ed Merrens' email doesn't say directly that</p> <p>7 a decision had been made to have Dr. DeMars step</p> <p>8 down as Chair. It suggests that this was</p> <p>9 voluntary.</p> <p>10 A Yes.</p> <p>11 Q It wasn't voluntary at all, was it?</p> <p>12 A I would say, well, I don't know. Voluntary with</p> <p>13 encouragement? Well, so it's a hard question to</p> <p>14 answer because I believe that Dr. DeMars perhaps</p> <p>15 had conversations with Maria and/or Ed about</p> <p>16 what is her future, what would make sense, and</p> <p>17 they may have reached a mutual agreement that</p> <p>18 this would make sense. So she was not outright</p> <p>19 terminated or told to step down, my</p> <p>20 understanding, but certainly it was a two-way</p> <p>21 conversation. That's my view. I don't know.</p> <p>22 Q At around this time, and I'm referring to say</p> <p>23 June 1 to the 22nd, during that few week period,</p> <p>24 were you asked by either Ed Merrens or Maria</p> <p>25 Padine whether you believed it would be good for</p>

34 (Pages 133 to 136)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">137</p> <p>1 the institution to have Leslie DeMars step down</p> <p>2 as Chair?</p> <p>3 A In not those exact words, yes.</p> <p>4 Q But the summary idea was what do you think,</p> <p>5 would this be good, and I take it you weighed in</p> <p>6 and said yeah?</p> <p>7 A I felt as her administrative partner that it</p> <p>8 would be better for her and for the</p> <p>9 organization, yes, that was my personal opinion.</p> <p>10 Q Better for her how?</p> <p>11 A I think that being a leader was quite stressful</p> <p>12 for her. Being a Chair was very stressful for</p> <p>13 her. I think she -- anyway, it was very</p> <p>14 stressful.</p> <p>15 Q What did you understand she would be doing?</p> <p>16 A It was unclear to me exactly at this point what</p> <p>17 she would be doing other than -- well, I was not</p> <p>18 clear.</p> <p>19 (Exhibit 18 marked for identification)</p> <p>20 Q Exhibit 18. You're not shown as one of the</p> <p>21 recipients of these series of emails. Were you</p> <p>22 aware of the effort that Katherine Pizzuti</p> <p>23 references about working on a comprehensive</p> <p>24 business plan for a new REI program?</p> <p>25 A Yes, I was aware that Liz Erikson, the Interim</p>	<p style="text-align: right;">139</p> <p>1 we'll give that Chair a chance to review that</p> <p>2 particular proposal and begin to integrate that</p> <p>3 and see how she deals with that going forward.</p> <p>4 (Exhibit 19 marked for identification)</p> <p>5 Q Do you recall receiving this?</p> <p>6 A Yes.</p> <p>7 Q Who's Debra Birenbaum?</p> <p>8 A She's, I don't know exactly. She's one of the</p> <p>9 members of the OB/GYN team. I don't know</p> <p>10 exactly who she is.</p> <p>11 Q A physician?</p> <p>12 A I believe so.</p> <p>13 Q And what do you recall receiving this? I mean,</p> <p>14 what about this email sticks in your mind?</p> <p>15 A I just remember that this was a note from a peer</p> <p>16 who was distressed at this decision.</p> <p>17 Q In her third paragraph, Dr. Birenbaum says,</p> <p>18 "Misty's expertise in gyn ultrasound far excels</p> <p>19 that of the general radiology staff and in fact</p> <p>20 most of us in general as well."</p> <p>21 Did you have any reason to doubt or</p> <p>22 disagree with that expression about the level of</p> <p>23 her expertise?</p> <p>24 A I'm not in a position to make that decision, but</p> <p>25 I had no reason to doubt it.</p>
<p style="text-align: right;">138</p> <p>1 Chair, was working on a comprehensive plan. She</p> <p>2 was also a candidate for the permanent Chair</p> <p>3 position although she didn't get it, but as one</p> <p>4 of members of the OB/GYN team and prior as the</p> <p>5 Interim Chair she had begun to put together a</p> <p>6 plan. And would have been a proposal.</p> <p>7 Q Heather writes to her in the middle on the first</p> <p>8 page of this, "Ed," this is to Katherine</p> <p>9 Pizzuti, "Ed, Maria, Joanne Conroy and Daniel</p> <p>10 Herrick are all aware and supportive of the fact</p> <p>11 that we are putting together a business plan</p> <p>12 proposal to restart the program."</p> <p>13 Was there discussion in the late summer or</p> <p>14 fall of 2017 about a timing, about a plan that's</p> <p>15 underway?</p> <p>16 A No. No specific timing. Just a future plan.</p> <p>17 Q Is that still where we are today? A future</p> <p>18 plan?</p> <p>19 A Yes. It's still a future plan.</p> <p>20 Q Any goal or point in the future where this plan</p> <p>21 would come to some sort of --</p> <p>22 A As I mentioned this morning, if Liz had become</p> <p>23 the permanent Chair, we probably would have been</p> <p>24 closer to actually bringing forth a proposal</p> <p>25 ready to go. Now that we have a new Chair,</p>	<p style="text-align: right;">140</p> <p>1 Q The next paragraph she says, "Misty is also</p> <p>2 currently our only surgeon that does advanced</p> <p>3 hysteroscopic procedures including difficult</p> <p>4 myomectomies and repair of uterine</p> <p>5 abnormalities. She also has done complicated</p> <p>6 laparoscopic procedures for treatment of</p> <p>7 endometriosis and other benign conditions."</p> <p>8 Do you know whether that's an accurate</p> <p>9 statement?</p> <p>10 A I don't know that it's an accurate or</p> <p>11 inaccurate.</p> <p>12 Q Let's take a quick break.</p> <p>13 (Recess taken 2:55 - 3:02 p.m.)</p> <p>14 Q We're going to mark as Exhibit 20 a three-page</p> <p>15 document, 15544 to 46.</p> <p>16 (Exhibit 20 marked for identification)</p> <p>17 Q Okay. This document is an email from Heather</p> <p>18 Gunnell to you, correct?</p> <p>19 A Yes.</p> <p>20 Q And the second page of the attachment, page</p> <p>21 15546, the middle of the page has a heading</p> <p>22 "Daniel 07 June 17" and then three paragraphs.</p> <p>23 Are those three paragraphs something you wrote?</p> <p>24 A It appears to be. The first two paragraphs make</p> <p>25 sense to me. The third one I'm, yes, I guess I</p>

35 (Pages 137 to 140)

Daniel Herrick - July 25, 2019

<p style="text-align: right;">141</p> <p>1 did write that. So that's a yes.</p> <p>2 Q All three?</p> <p>3 A This is my work. Yes.</p> <p>4 Q And Tim Fisher has the position having to do</p> <p>5 with education of residents and --</p> <p>6 A Yes, academics and research, I believe.</p> <p>7 Q And was the meeting with Tim Fisher about the</p> <p>8 REI Division, Leslie saying messages being</p> <p>9 delivered or was it about something else and you</p> <p>10 just happened to get on to this?</p> <p>11 A No, this was a one-on-one meeting where I sought</p> <p>12 him out because he had been in that meeting.</p> <p>13 Q And why did you want to talk to him?</p> <p>14 A I wanted to confirm some of the things that had</p> <p>15 been said, and I had known him. I knew him, of</p> <p>16 all of the providers I knew him. He came from</p> <p>17 Keene, and I knew him from down there, and so I</p> <p>18 felt that I could reach out to him and get a</p> <p>19 fair assessment of what had been said during</p> <p>20 that meeting.</p> <p>21 Q In fact, he reports, yeah, Leslie is going</p> <p>22 around and basically saying these things about</p> <p>23 not getting the support from senior leadership,</p> <p>24 et cetera, right?</p> <p>25 A Right.</p>	<p style="text-align: right;">143</p> <p>1 get out so that we could make sure we would be</p> <p>2 in a position to anticipate how to respond,</p> <p>3 public pressure, public information.</p> <p>4 Q I have nothing further.</p> <p>5 MR. SCHROEDER: I don't have any questions</p> <p>6 at this time.</p> <p>7 (Deposition ended at 3:07 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">142</p> <p>1 Q And then apparently the way I read this, tell me</p> <p>2 if I'm right, after talking to Tim Fisher, you</p> <p>3 spoke to Leslie?</p> <p>4 A That's correct.</p> <p>5 Q And what did she tell you?</p> <p>6 A That she thought it was Paul Manganiello who</p> <p>7 shared some of the public information on</p> <p>8 Facebook and that she had asked him to remove</p> <p>9 it.</p> <p>10 Q The document before your comments about who's on</p> <p>11 the REI team and various other items, this is</p> <p>12 all being written after the closing, right?</p> <p>13 A Yes. I believe. I believe that this was in</p> <p>14 response to certain pieces information that were</p> <p>15 shared publicly and we were wondering, the</p> <p>16 organization was wondering how this information</p> <p>17 had become public. So this would be a list of</p> <p>18 who had inside knowledge and then this was an</p> <p>19 addendum to that. My comments were an addendum</p> <p>20 to that.</p> <p>21 Q When you say "leadership was wondering," who are</p> <p>22 we talking about?</p> <p>23 A Ed, Maria, me.</p> <p>24 Q And why was that a concern?</p> <p>25 A Just wondering how information like that could</p>	<p style="text-align: right;">144</p> <p>I have carefully read the foregoing deposition, and the answers made by me are true.</p> <p style="text-align: center;">_____ DANIEL HERRICK</p> <p>STATE OF _____ _____, SS.</p> <p>At _____ on the _____ day of _____ A.D. 2019, personally appeared the above-named DANIEL HERRICK and made oath that the foregoing answers subscribed by him are true.</p> <p style="text-align: right;">Before me,</p> <p style="text-align: center;">_____ Notary Public</p>

36 (Pages 141 to 144)

Daniel Herrick - July 25, 2019

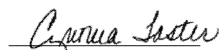
145

CERTIFICATE

I, Cynthia Foster, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing pages, numbered 6 through 143, are a true and accurate transcription of my stenographic notes of the Deposition of DANIEL HERRICK, who was first duly sworn by me, taken before me on July 25, 2019, for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.



Cynthia Foster, RPR
Comm. expires: 1/31/2021



37 (Page 145)